

Real Estate Commission Bulletin



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Is That a Service Dog?

by Scott A Sherley, Educator, Senior Trainer, Associa Hawaii

"Is that a service dog?" is a question heard all too often now, especially if you're a property manager or a condominium association board member. The appearance of pets on properties previously known as NOT pet-friendly is due to the emergence of "emotional support animals", commonly referred to as "comfort animals". However, these types of animals are not "service animals" even if the animal may be wearing a vest that states they are a service animal. In exploring this issue we have to understand that there is a significant difference between the two types of animals, Service vs. Comfort Animal.

A service animal is qualified under the Americans with Disabilities Act of 1990 (ADA). The intent of the ADA was public accommodation for people with disabilities. The law also included transportation and employment references, but for the issue of animals we will stick with the "Public Accommodation" scenario, meaning access to businesses for people with disabilities. Not only did the law require accessibility for people with disabilities, it also required the acceptance of trained service animals, such as seeing eye dogs.

There was no specific definition of what types of animals would be considered a service animal. Thus, there are videos of people using rats as service animals! That all changed on March 15, 2011, when the Department of Justice (DOJ) clarified the definition of a service animal as a "properly trained dog, or properly trained service miniature horse." No other animals were listed as acceptable. The DOJ memo clarified that the ADA rules did not change anything under the Federal Fair Housing Law related to "Persons with a Disability" and "Reasonable Accommodation". What



that really meant is that the "comfort animal" in various forms was still acceptable in residential situations, but not in commercial access to business such as banks, grocery stores, restaurants, etc. A bona fide service animal is allowed in any place of public accommodation (i.e. business open to the public) and in residential scenarios, but the infamous "comfort animal" is not allowed in businesses as it is not considered a service animal.

Recently, there was a case involving two emotional support chickens residing in a condominium, and another case involving a family of 3 with 5 dogs, in a condominium unit (which is a rental) claiming the five dogs are all comfort animals. Property managers deal with this issue on nearly a daily basis, and condo boards are dealing with it more frequently as well.

A comfort animal is not a service animal as defined under the ADA, and there is no clarification under

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Is That a Service Dog? (cont. from page 1)

the Fair Housing Act as to what type of animal can be a comfort animal. Because of this lack of clarification, chickens, pot belly pigs, rabbits and more are being identified as comfort animals, not just cats or dogs. All the person with the comfort animal needs to provide to a property manager or a condominium board is a letter written by a medical professional stating that the person has a disability that requires them to have the animal. The landlord, property manager, and the condominium board is not allowed to ask what that disability is (remember not all disabilities are visible), however the landlord, property manager, or condo board may contact the medical professional to verify that they did, in fact, write the letter. We have cases in Hawaii where those letters have been forged, and in one case I was involved with, the person with multiple comfort animals had actually altered the letter to state “three” animals instead of “one” as the doctor had originally written. When that was discovered the doctor disavowed the letter and the letter could no longer be used for a basis of having a comfort animal. The biggest problem we face is that anyone can get these letters along with vests and identification on the internet,

so suddenly you see multiple animals all wearing service animal vests, including the chickens mentioned above.

One of the biggest issues is there is no clarification in the Federal Fair Housing Law. You may be surprised to learn that the term “emotional support animal” does not even appear in the law. The comfort animal issue falls under the term “Reasonable Accommodation” in the Fair Housing Law, which addresses accommodating service or emotional support animals in a rental unit or condominium that does not allow pets. Perhaps an easy way to explain the difference between the two terms is: Americans with Disabilities Act addresses commercial property access; the Federal Fair Housing law addresses comfort animals in residential situations.

What's a BIC?

“BIC” stands for Broker-in-Charge. What’s a Broker-in-Charge? Hawaii Administrative Rules (“HAR”) states, “Broker-in-charge” means an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office. The principal broker may designate one or more brokers-in-charge of the principal place of business or branch office, provided that there shall be at least one broker-in-charge of each branch office. A broker-in-charge may be designated to more than one branch office.”

“Branch office” means a “place of business other than the principal place of business from which real estate business is conducted. Branch offices located on an island different from the principal place of business shall be registered with the commission. Branch office registration shall not be required for places of business located on the same island as the principal place of business and registration shall not be required for any additional place of business from which real estate broker activities are engaged in exclusively relative to a condominium project, teal estate subdivision, larger community development developed by a single developer, time share project, new or existing shopping center, or other commercial building.”

A broker-in-charge is not the same individual as the principal broker. There must be a principal broker for each licensed brokerage. Without a principal broker the brokerage is not able to function. In fact, the real estate corporation, partnership, limited liability

company or limited liability partnership must have a licensed principal broker on board when it applies for its brokerage license. Without a principal broker, the brokerage will not be approved for licensure. A brokerage is not required to have a broker-in-charge, but must have a principal broker.

A broker-in-charge may be delegated many responsibilities by the principal broker. Hawaii Revised Statutes (“HRS”) §467-1.6*(c) states, “The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker’s written policies and procedures. The principal broker shall be responsible for the education, enforcement, and records required of such policies and procedures.”

If a broker-in-charge is delegated specific responsibilities, these delegated responsibilities should be memorialized in the principal broker’s policies and procedures manual. Should an investigation by the Regulated Industries Complaints Office (“RICO”) occur, the brokerage’s policies and procedures manual will be reviewed to substantiate and verify responsibilities of the broker’s-in-charge in the brokerage who are delegated various responsibilities. If the responsibilities are not delegated in writing, there may be possible disciplinary action taken by RICO.

HAR §16-99-3(o) notes that if a principal broker or broker-in-charge is absent from the principal place of business for more than thirty days, and no other broker-in-charge is registered for the

The Chair's Message - 2017 ARELLO Annual Meeting in Hawaii



Aloha!

What is ARELLO? It's the Association of Real Estate License Law Officials. ARELLO was established in 1930, initially as NALLO, the National Association of License Law Officials. Some of the Real Estate Commissioners and the Real Estate Division's SEO attend the ARELLO meetings twice a year for the Mid-Year and the

Annual meetings to represent Hawaii. It's an important lifeline for Hawaii because of our remote geographic location, which allows us to exchange information with state commissioners and regulators across the nation and other countries. ARELLO is also an excellent venue to communicate and develop cooperation and relationships among regulators and policy makers through the United States and nationally. At our last Mid-Year meeting this past April, there were 31 states, D.C., Saskatchewan, BC, Nova Scotia and 51 affiliate members in attendance.

The information shared at ARELLO is valuable and relevant. From information on how Idaho deals with their law that property managers don't real estate or any license to operate; to California's ability to do audits of property management companies; to Montana's creation of pre-licensing courses and a specific real estate license for property managers. In addition to unique state issues,

many of the jurisdictions share common concerns that need to be addressed by new laws, regulations and policy. These common reoccurring issues include "team" advertising and the staffing of teams with unlicensed persons; cross-jurisdictional licensing and reciprocity for licensees practicing in adjacent and adjoining states; drones and privacy laws; "coming soon" advertising without a listing agent; and the sale of timeshare point by unlicensed persons and dual agency, among many others.

Why tell you all this about ARELLO? Because for the first time in its history, ARELLO will be having its Annual meeting this year in Honolulu, Hawaii, September 20-24 at the Sheraton Waikiki! This means commission and board members from many other states and countries who regulate the real estate licensing industry as well as policy makers will be coming to Hawaii to discuss many important issues that may impact our licensees as well, such as teams and team advertising, property management licensing, use of drones, real estate scams, and dual agency and new educational resources. Guests (nonmembers) are welcome to all committee meetings and session, unless the schedule specifically notes it's a closed session. Find out more about ARELLO and the Annual conference in Hawaii at <https://www.arello.org/events/view-Event.cfm?e=132#>. We hope to see you there!

(s) Nikki Senter, Chair

What's a BIC? (cont. from page 2)

principal place of business, the principal broker must designate a temporary principal broker or broker-in-charge and notify the commission in writing (using the Change Form). If possible, it's a good practice to designate a broker-in-charge for the brokerage. This may be difficult for smaller brokerages, but nevertheless, to have an already-designated broker-in-charge makes good business sense.

HAR§16-99-4 Client's account; trust funds; properties other than funds. The broker-in-charge is the only other licensee in a brokerage who may accept or receive funds, property other than funds in trust for other people. Again, the principal broker should state this responsibility in the policies and procedures manual. Note that the principal broker and broker-in-charge are jointly responsible for any trust properties and funds the principal broker authorizes the broker-in-charge to handle.

The broker-in-charge may also sign an individual licensee's experience certification statement when the licensee is submitting his

or her broker experience certificate application to the commission. The BIC may also place an individual licensee on an involuntary inactive status after written notification to the affected licensee. The principal broker must designate a broker-in-charge to be in charge of a branch office, and the broker-in-charge may be responsible for more than one branch office.

The BIC is an important position in a brokerage, that is fortunate to have a designated BIC. Having a BIC in place may alleviate any unforeseen circumstances that occur that affect the principal broker's ability to function. Business may proceed pretty much as usual, whereas if a brokerage's principal broker is suddenly incapacitated, the brokerage may have a difficult transition period while dealing with signing on a new principal broker.

Food for thought.

Real Estate Brokers and Mortgage Servicer Kickback Case

by Iris Ikeda, Commissioner, Division of Financial Institutions
Department of Commerce and Consumer Affairs

The Consumer Financial Protection Bureau (“CFPB”) issued an order against Prospect Mortgage, LLC, for paying illegal kickbacks for mortgage business referrals in violation of the Real Estate Settlement Procedures Act (“RESPA”). The CFPB also took action against two real estate brokers and a mortgage servicer that took illegal kickbacks from Prospect. For the RESPA violations Prospect will pay a \$3.5 million civil penalty for its illegal conduct, and the real estate brokers and servicer will pay a combined \$495,000 in consumer relief, repayment of ill-gotten gains, and penalties.

There are three general categories of conduct violations by Prospect, ReMax, Keller Williams, and Planet Lending. First, Prospect had various agreements with over 100 real estate brokers, including ReMax Gold Coast (“ReMax”) and Keller Williams Mid-Willamette (“Keller Williams”), which were primarily used as vehicles to fund payments for referrals of mortgage business. ReMax and Keller Williams accepted illegal payment for referrals. Both companies were among more than 100 brokers who had marketing services agreements, lead agreements, and desk-license agreements with Prospect, which were, in whole or in part, vehicles to obtain illegal payments for referrals. Prospect tracked the number of referrals made by each broker and adjusted the amounts paid accordingly. The desk-license agreements were based on the promise that the brokers would refer customers to Prospect. The agreements allowed the brokers and loan officers to meet with customers. The desk-license payments were based on the number of referrals, not related to the fair market value of the space paid by Prospect, thus, it violated RESPA.

Second, Prospect used a method to obtain referrals under their lead agreements. Prospect had brokers engage in a practice of “writing in” Prospect into their real estate listings. “Writing in” meant that brokers and their agents required anyone seeking to purchase a listed property to obtain prequalification with Prospect, even consumers who had prequalified for a mortgage with another lender or wanted to pay cash. These referrals were used to increase referral payments by Prospect.

Third, Prospect and Planet Home Lending (“Planet”) had an agreement under which Planet worked to identify and persuade eligible consumers to refinance with Prospect for their Home Affordable Refinance Program (HARP) mortgages. Under their arrangement, Planet Home Lending took half the proceeds earned by Prospect for the sale of each mortgage loan originated as a result of a referral from Planet. Planet also accepted the return of the mortgage servicing rights of that consumer’s new mortgage loan. In addition, Planet ordered “trigger leads” from one of the major consumer reporting agencies to identify which of its

consumers were seeking to refinance so it could market Prospect to them. This was a prohibited use of credit reports under the Fair Credit Reporting Act because Planet was not a lender and could not make a firm offer of credit to those consumers.

Under the consent order, Prospect will pay \$3.5 million to the CFPB’s Civil Penalty Fund for its illegal kickback schemes. The company is prohibited from future violations of the Real Estate Settlement Procedures Act, will not pay for referrals, and will not enter into any agreements with settlement service providers to endorse the use of their services. http://files.consumerfinance.gov/f/documents/201701_cfpb_ProspectMortgage-consent-order.pdf

Under the consent orders, ReMax and Keller Williams are prohibited from violating the Real Estate Settlement Procedures Act, will not pay or accept payment for referrals, and will not enter into any agreements with settlement service providers to endorse the use of their services. ReMax Gold Coast will pay \$50,000 in civil money penalties, and Keller Williams Mid-Willamette will pay \$145,000 in disgorgement and \$35,000 in penalties. http://files.consumerfinance.gov/f/documents/201701_cfpb_RGCServices-consent-order.pdf

Under the consent order filed against Planet Home Lending, the company will directly pay harmed consumers a total of \$265,000 in redress. The company is also prohibited from violating the Fair Credit Reporting Act and the Real Estate Settlement Procedures Act, will not pay or accept payment for referrals, and will not enter into any agreements with settlement service providers to endorse the use of their services. http://files.consumerfinance.gov/f/documents/201701_cfpb_PlanetHomeLending-consent-order.pdf

These are important lessons for real estate brokers and the mortgage industry to be aware of. The DCCA, Division of Financial Institutions, regularly examines the mortgage industry and specifically examines compliance with RESPA. Please familiarize yourself with the provisions of RESPA so that you do not violate RESPA.

Administrative Actions

April 2017

Cindy L. Vicoy
RS 77818

Case No. REC 2016-40-L
Dated 4/21/17

Allegations:

Before being issued a license by the Commission 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"), but, the Respondent failed to disclose the Conviction when she answered the licensing application question that asks for criminal convictions.

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

Sanctions:

Fine of \$500.00.

Aileen Saramosing Whiting, doing business as Aileen S. Whiting and formerly known as Aileen W. Ramos
RS 74323

Case No. REC 2016-34-L
Dated 4/21/17

Uncontested Facts:

On or about January 25, 2017, RICO filed a Petition for Disciplinary Action (hereinafter "Petition") alleging that Respondent violated, in part, the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") §§ 436B-19(2) (making untruthful or improbable statements); 436B-19(5) (procuring a license through fraud, deceit, or misrepresentation); 436B-19(17) (violating applicable licensing law, rules, or order of licensing authority); and 467-20 (filing any notice, statement, or other document required under Chapter 467 with the Commission that is false, untrue, or contains any material misrepresentation of fact).

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

Sanctions:

Fine of \$1,000.00.

Facts Supporting the Licensing Violations:

Respondent submitted an application for a real estate salesperson license dated March 21, 2012 with the Commission.

Under section C of the application, under subsections 1 c., Respondent was asked, "[h]ave any complaints or charges ever been filed against you, regardless of outcome, with the licensing agency of any state?"

Respondent checked the "No" box.

Under section C of the application, under subsection I d., Respondent was asked, "[h]ave any charges of unlicensed activity ever been filed against you, regardless of outcome, with the licensing agency of any state?"

Respondent checked the "No" box.

On or about February 27, 2009, an Application for Entry of Consent Judgment (hereinafter "Consent Judgment") was filed in the Circuit Court of the First Circuit by the Regulated Industries Complaints Office (hereinafter "RICO") of the Department of Commerce and Consumer Affairs, State of Hawaii to resolve allegations against Respondent for operating a massage therapy establishment without a license as well as operating an unlicensed beauty shop.

As part of the Consent Judgment, Respondent agreed to pay a \$1,000.00 fine to resolve the allegations of unlicensed activity.

Administrative Actions (cont. from page 5)

Michael Makana Osborne
RS 68010

Case No. REC 2015-291-L
Dated 4/21/17

Findings of Facts:

Before applying for and receiving a license the Respondent was convicted of two misdemeanors in Hawaii but did not disclose them in 2006 when he answered the licensing application question that asks for criminal convictions. The Respondent complied with the terms of both convictions.

In 2012 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.

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

Sanctions:

Fine of \$1,000.00.

May 2017

**Deborah J. Kirk, and
DNA Enterprises Inc.,
dba DNA Realty**
RS 68117
RB 21596

Case No. REC 2016-127-L
Dated 5/26/17

Findings of Fact:

From around mid-2009 until 8/20/14, Respondent Kirk was associated with Musashiya Inc., dba Oahu Realty (hereafter "Oahu Realty"), as a real estate salesperson. From mid-2009 until 2014- 2015 Respondent Kirk contracted to, acted as and performed all duties associated with managing a rental on Ohua Avenue in Honolulu (hereafter "rental"), for a nonresident owner. These duties included preparing and executing instruments like a property management contract and leases; generating invoices and collecting on the same; collecting rents from tenants and disbursing them to the owner each month; and, collecting, holding and disbursing security deposit funds. Respondent Kirk received compensation for performing these duties by deducting a management fee from the rents collected each month.

Before DNA Realty became licensed as a broker in 2014 it too acted alongside Respondent Kirk in managing the rental.

Wayne Masuda, Oahu Realty's principal broker, could not recall discussing or consenting to the management of the rental by Respondent Kirk while she was with Oahu Realty. The owner of the rental never heard of, worked with, or worked through anyone from Oahu Realty but interacted with the Respondents only during the entirety of the business relationship.

Violations: HRS § 436B-19(6), HRS § 436B-19(7), HRS § 436B-19(16), HRS § 467-1, HRS § 467-14(5), HRS § 467-14(6), HRS § 467-14(13), HAR § 16-99-4 (g), and HAR § 16-99-4(i)

Sanctions:

Fine of \$5,000.00.

Administrative Actions (cont. from page 6)

Joreen Knox
RB 21618

Case No. REC 2016-85-L
Dated 5/26/17

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"). See HRS §291E-61. 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), HRS §436B-19(14), and HRS § 436B-19(17).

Sanctions:

Fine of \$500.00.

Mary H. Rogde
RB 6646

Case No. REC 2016-332-L
Dated 5/26/17

Uncontested Facts:

On or about December 31, 2014, the license of a real estate salesperson, Kayla S. Kim, then associated with New Life Realty, Inc., expired and/or was forfeited.

Ms. Kim restored her license on or about October 17, 2016.

Ms. Kim will be the subject of a separate settlement agreement or proceeding.

Ms. Kim undertook activities requiring a license between approximately January 1, 2015 and October 17, 2016.

Respondent failed to ensure that Ms. Kim's license was timely renewed. Respondent fully cooperated with RICO in the investigation of this matter.

Violations: HRS §467-1.6(b) (7).

Sanctions:

Fine of \$1,000.00.

Kayla S. Kim
RS 74801

Case No. REC 2016-331-L
Dated 5/26/17

Uncontested Facts:

On or about December 31, 2014, Respondent's real estate license expired and/or was forfeited. Respondent moved her residence before the end of 2014 and did not realize that her license was not renewed at the end of 2014. Respondent undertook activities requiring a license between approximately January 1, 2015 and October 17, 2016.

Respondents fully cooperated with RICO in the investigation of this matter, including providing RICO with documentation of her real estate transactions she engaged in while her license was not active.

Respondent restored her license on or about October 17, 2016

Respondent's principal broker during the time her license was inactive will be the subject of a separate Settlement Agreement or proceeding.

Violations: HRS §467-7.

Sanctions:

Fine of \$1,250.00.

Administrative Actions (cont. from page 7)

Todd E. Hart, a real estate broker, Debra Hart, a real estate salesperson, and HART of Kona Realty, Inc., a real estate broker
RB 17028
RB 17331

Case No. REC 2008-227-L;
REC 2015-169-L
Dated 5/26/17

Findings of Facts:

On September 4, 2015, in REC 2008-227-L, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office (hereafter "Petitioner"), filed a petition for disciplinary action against the real estate licenses of brokers Todd E. Hart and Hart of Kona Realty, Inc., and salesperson Debra Hart. On September 4, 2015, in REC 2015-169-L, Petitioner also filed a separate petition for disciplinary action against the real estate license of broker Todd E. Hart.

Respondent Hart of Kona Realty, Inc., was licensed by the Real Estate Commission as a real estate broker pursuant to license RB 17331. The license was issued on or about December 10, 1999, and expired on December 3, 2008. The license was forfeited on December 31, 2010. It has not been an operating company since 2007 or 2008.

Prior to 2004, Respondent Todd Hart owned a real estate business named Action Team Realty, Inc. (hereafter "Action Team").

Effective November 4, 2004, Action Team entered into a Sale of Assets Agreement (hereafter "Agreement") with Ashley Realty, Inc., apparently owned by Austin and Marissa Ashley (hereafter, collectively, "Ashley"). Per the Agreement, and for the purchase price of \$600,000, Action Team agreed to sell to Ashley, and Ashley agreed to buy, the Action Team brokerage business which included listings, the company's goodwill, the equipment and tangible assets of the firm, the firm's remaining leasehold interest in the office space occupied for its business, and the firm's corporate and trade names.

The purchase price for the assets was \$600,000.00 payable by means of a promissory note secured by a junior mortgage on property owned by Mr. and Mrs. Ashley. Starting 120 days following the closing of the transaction, the buyer was to make monthly payments of \$7,320.00.

At the time, Todd Hart and Debra Hart were married. Both Todd Hart and Debra Hart signed the Agreement as indemnitors and guarantors pursuant to the terms of the Agreement. It appears from the documents presented to the Hearings Officer that Hart of Kona Realty, Inc., was not a party to the Agreement and was not an indemnitor or guarantor of the Seller's obligations under the Agreement.

The Agreement further provided that Todd Hart would continue to serve as Vice President of Action Team and, as an independent contractor, also serve as Principal Broker for Action Team for a transition period ending on June 30, 2005.

Disputes arose between the parties to the Agreement. Ashley made the first two payments under the Agreement (which should have totaled \$14,640.00), and then ceased making any payments.

The disputes between the parties were submitted to binding arbitration sometime in 2006.

Claimants in the arbitration were Austin Ashley, Marissa Ashley, and Action Team Realty, Inc. Respondents in the arbitration were Todd Hart, Debra Hart, and Hart of Kona Realty, Inc.

After the completion of a two day hearing and consideration of the filings of the parties, a Final Arbitration Award in favor of Ashley and against Todd Hart, Debra Hart, and Hart of Kona Realty, Inc., was issued on June 5, 2006.

The Final Arbitration Award made findings and conclusions, including the following:

- a. Todd Hart breached the Covenant Not to Compete clause in the Agreement. These breaches were equally chargeable to Debra Hart. The Covenant Not to Compete promised freedom from competition on the Island of Hawaii for a period of five (5) years and was held to be enforceable.
- b. The Agreement prohibited the Harts from selling real estate, including the representation of buyers of real estate, with the sole exception of the Harts' personal real property. Todd Hart breached the Covenant Not to Compete by representing individuals, including buyers and sellers, in several real estate transactions on the Island of Hawaii while still a principal broker for Action Team Realty, Inc., (apparently during the transition period referred to above) and subsequent to his departure.
- c. The Agreement transferred to Ashley the corporate name Action Team Realty, Inc., the trade name Action Team Realty, and all logos used by the Harts in conjunction with the business. Todd Hart repeatedly breached the Covenant Not to Compete by his use of the logo "Call Todd!" which had been transferred to Ashley and should not have been used thereafter.

Administrative Actions (cont. from page 8)

d. Todd Hart breached the Warranty of Quiet Enjoyment in the Agreement by failing to disclose known pending claims and/or lawsuits to Ashley, failing to effectively advise government entities, financial institutions, and relevant real estate businesses of the change in ownership of Action Team Realty, Inc., and failing to effectively notify former Action Team Realty, Inc. property management clients about the change of ownership and that Action Team Realty, Inc., was no longer in the property management business. These breaches of the Agreement were equally chargeable to Debra Hart.

The Arbitration Award released Ashley's obligations to make any further payments under the promissory note. In essence, the Arbitration Award allowed Ashley to buy the Action Team business for \$14,640 instead of \$600,000. In addition, the Arbitrator awarded Ashley \$500,000.00 in damages and \$68,564.88 in attorney's fees and costs for a total award of \$568,564.88 over and above the release of the obligation to pay \$585,360 that would have otherwise been due on the promissory note.

The Arbitration Award provided no explanation of how the damage award was determined.

The Final Arbitration Award does not list or spell out any improper actions by Hart of Kona Realty, Inc., and there was no explanation to the Hearings Officer why Hart of Kona Realty, Inc., was a party to the arbitration and why the Final Arbitration Award was also made against Hart of Kona Realty, Inc.

Respondent Todd Hart did not report said arbitration award in writing to the Real Estate Commission within thirty days of the issuance of the award.

Following issuance of the arbitration award, Ashley and Action Team Realty, Inc., filed suit against Todd Hart, Debra Hart, and Hart of Kona Realty, Inc., in the Circuit Court of the Third Circuit seeking to confirm the June 5, 2006 arbitration award.

In that lawsuit, after granting the plaintiffs' motion for confirmation and denying the defendants' motion to vacate, a final judgment was entered by the Circuit Court on September 20, 2006, confirming the arbitration award.

Respondents Todd Hart and Hart of Kona Realty, Inc., did not report said final judgment in writing to

the Real Estate Commission within thirty days after entry of judgment.

Respondents Todd Hart and Hart of Kona Realty, Inc., appealed the final judgment. On February 25, 2011, the Intermediate Court of Appeals issued a memorandum opinion vacating the Circuit Court's final judgment and remanding the case for further proceedings. The issue to be determined on remand was whether the arbitrator engaged in unauthorized ex parte communications with another attorney in her firm and whether the alleged consultation was prejudicial misconduct. Another issue to be determined on remand was whether two ex parte communications between the arbitrator and counsel for Ashley amounted to prejudicial misconduct.

On February 28, 2012, the Third Circuit Court filed its Findings of Fact; Conclusions of Law; Order Confirming Final Arbitration Award and Final Judgment. This confirmed the Third Circuit Court's September 20, 2006 judgment.

On March 2, 2012, the Third Circuit entered a second final judgment confirming the Arbitration Award.

Respondents Todd Hart and Hart of Kona Realty, Inc., did not inform the Real Estate Commission in writing of the March 2, 2012 judgment within thirty days of its entry.

Respondents Todd Hart and Hart of Kona Realty, Inc., appealed the March 2, 2012 Judgment. On October 2, 2014, the Intermediate Court of Appeals issued a summary disposition order on this second appeal which affirmed the March 2, 2012 judgment.

At some point in time, Petitioner had contacted Mr. Hart about the arbitration award, notifying him that the award had not been reported, and Mr. Hart thought his attorney at the time had supplied the necessary documentation to Petitioner. There was, however, no credible evidence of the date of this contact, although presumably it was after July 18, 2008, when Petitioner received Exhibit 4, and it is clear from Petitioner's witnesses that neither the arbitration award nor the judgments were supplied to Petitioner within thirty days of their issuance or entry.

Administrative Actions (cont. from page 9)

Respondents have satisfied approximately \$157,500 of the aforesaid arbitration award and final judgment. Considering the accumulation of interest over time, a substantial amount is still due and owing on the arbitration award and final judgment.

Respondent Todd Hart was a defendant in a lawsuit filed on May 27, 2009 by Mr. Dennis Wills.

In 2007, Mr. Wills and his wife were interested in buying a home in the Captain Cook area that was owned by Mr. Hart. In the summer of 2007, Mr. and Mrs. Wills sent Mr. Hart \$15,000 in advance to reserve the Captain Cook home for them to buy because their current residence in Washington State had not yet been sold.

The Washington sale did not go through, and, in settling up with Mr. Hart, Mr. and Mrs. Wills agreed that they would allow Mr. Hart to retain \$5,000 of the \$15,000 advance. Mr. Hart was to return the remaining \$10,000, and, on April 17, 2008, Mr. Hart executed a promissory note to Mr. Wills for the \$10,000 balance.

Mr. Hart never made a payment on the note. Mr. Wills' lawsuit sought the \$10,000 balance on the note plus court costs and attorney's fees.

In that lawsuit, a judgment in favor of Mr. Wills and against Respondent Todd Hart for a total of \$12,714.83 was entered on August 2, 2010.

Respondent Todd Hart did not inform the Real Estate Commission in writing of said judgment within thirty days after it was entered.

As of the date of the hearing herein, no portion of the judgment in favor of Mr. Wills had been satisfied.

It should be noted that Petitioner did not allege that Mr. Hart failed to disclose the arbitration award and/or any of the judgments when renewing his real estate broker's license. In addition, the evidence showed that Petitioner was aware of the arbitration award by July of 2008. To the Hearings Officer, the failure to properly disclose an arbitration award or judgments when renewing a license would be a more serious offense than failure to report an arbitration award or judgment within thirty days.

Under these circumstances, the Hearings Officer does not consider the failure to report violations as a substantial basis for recommending the revocation of Mr. Hart's license.

As Petitioner made clear at the hearing, the real basis for Petitioner seeking revocation is the conduct underlying the arbitration award and the Wills judgment. Both cases involve substantial damages as a result of Mr. Hart's disregard of obligations he agreed to. He lost both cases and has not fully satisfied any of the judgments. Those judgments have been on record for several years now. From Petitioner's point of view, Mr. Hart falls short of what licensed real estate brokers should be in terms of integrity and a spotless record.

From Mr. Hart's point of view, the arbitration award is fatally flawed because the arbitrator was allegedly incompetent and biased. He has many complaints about the Ashleys, their attorney, and his ex-wife. The Hearings Officer finds none of this to be relevant because Mr. Hart cannot avoid the effects of the arbitration award as stated on the record. Irrespective of his personal feeling of bitterness and betrayal, the arbitration award cannot be changed.

Having said that, however, it must be noted that the arbitration award is devoid of details about what happened and what went wrong. There was no legal requirement that the arbitrator explain the basis of her findings of breaches of the Agreement or explain the basis of what is perhaps an exceedingly generous overall award to Ashley. While the arbitration award mentions pleadings and other documents that may contain relevant background to the award, Petitioner did not introduce any of those documents into evidence. In addition, Petitioner did not call any witnesses who might have been able to explain some of the specifics of the award. Petitioner specifically eschewed any request for restitution to Ashley based on upon this award.

Accordingly, Petitioner's request for revocation of Mr. Hart's license is hamstrung to a great degree by a lack of any specifics.

On the other hand, Mr. Hart argues that he has been involved in approximately 700 real estate transactions-over many years as a real estate licensee and that his record vis-à-vis those consumer transac-

Administrative Actions (cont. from page 10)

tions is exemplary except for the Wills judgment. Considerable weight has to be given to this record.

Mr. Hart also has expressed a willingness to now pay off the Wills judgment. That is commendable, but the Hearings Officer does not give that sentiment much weight because there does not appear to be any reason while some of that judgment, if not all of it, could not have already been paid off in the last four years.

The Hearings Officer does give greater weight to the Petitioner's request for an order of restitution concerning the Wills judgment. That is a very laudable request considering that this was essentially a consumer transaction.

What the Petitioner fails to take into account, however, is that there was no evidence that Mr. Hart would have the practical ability to pay off the Wills judgment, plus accrued interest, in the future if his real estate brokers license was revoked.

As a practical matter, the Hearings Officer concludes that restitution is the more important goal in this case, that restitution will be no more than a probably unfilled promise if Mr. Hart's license is revoked, and that Mr. Hart's otherwise good record in over 700 consumer-type real estate transactions is a good recommendation that he will not make future prejudicial mistakes in such transactions once restitution to Mr. Wills is accomplished.

Violations: HRS §§ 436B-16(a), 436B-19(7), 436B-19(17), and 467-14(20), HAR §16-99-3(b).

Order:

Respondent Todd Hart fully pay off the Wills judgment, including interest that has accrued thereon, and provide evidence to Petitioner of a recorded satisfaction of that judgment, no later than one (1) year from the date of the Real Estate Commission's Order in this matter.

Revoke Respondent Todd Hart's real estate broker's license, but that such revocation be suspended. Such suspension of revocation should immediately expire, and Respondent Todd Hart's license should be immediately revoked, if Respondent Todd Hart fails to comply with the aforesaid order of restitution. Such revocation shall occur upon written no-

tice of non-compliance with the aforesaid order of restitution by Petitioner to Respondent Todd Hart and without the need for any further hearings in this matter. If Respondent Todd Hart timely complies with the restitution order, the order revoking his license shall be rescinded.

That in case Respondent Todd Hart's license is revoked, that the Real Estate Commission order that full compliance with the restitution order be a condition for licensing in the event that Mr. Hart ever applies in the future for any type of license in the State of Hawaii.

The respondents filed exceptions to the proposed final order, and appeared before the commission on 6/23/17. However, after listening to the presentation, the Commission voted to go ahead with their final order as noted below.

Final Order: The Commission did not fully accept the Hearings' Officer's recommendations. Instead they voted to revoke Mr. Hart's broker's license with a \$10,000.00 fine. The same order was applied to Hart of Kona Realty, revocation of its broker's license and a \$10,000.00 fine.

NOTE: The Respondents submitted their "Exceptions to Proposed Written Order, and Statement in Support of Exceptions to Proposed Written Order" on 3/14/17. RICO, in turn submitted its "Petitioner's Objection To and Motion To Have the Commission Strike Extraneous Information Submitted by the Respondents." At its monthly meeting on 5/26/17, the Commission voted to accept the Proposed Final Order, thereby imposing the license revocation of Mr. Hart's real estate broker license, Hart of Kona's real estate broker license, and a \$10,000.00 for each Respondent.

Administrative Actions (cont. from page 11)

**1628 Business, Ltd.,
dba Eddie Flores Real
Estate Continuing
Education**

Provider #35
Bryan Andaya,
Administrator

Dated 5/26/17

Respondent's registration as a continuing education provider was not renewed and was forfeited effective 1/1/17.

Respondent renewed and/or restored its registration as a continuing education provider on 2/13/17. Respondent admits that it was acting as a continuing education provider while its registration was forfeited. Respondent submits that its failure to timely renew its registration was an oversight and not intentional. Respondent submits that it has taken steps to ensure that it will renew its registration in a timely manner in the future.

Administrative Fine of \$1,000.00.

**Realty Group Inc.,
dba Realty Group and
Glenn Nishihara**
RB 17467
RB 16989

Case No. REC 2012-53-L
Dated 1/27/17

Allegations: Realty Group's license expired on 12/31/12. Sometime in 2010 discrepancies or questions arose regarding client trust account handling and management.

Respondents represent that any alleged discrepancies and/or mishandling of a client trust account was not intentional, any alleged errors were corrected, at no time were the firm's clients or customers in jeopardy, no clients or customers suffered harm, and, no client, customer or member of the public complained about the firm's operations. Respondents, therefore, do not admit to the RICO allegations set forth and Respondents deny having violated any licensing law or rule. Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing in this matter.

Violations: HRS §436B-19(7), §467-14(8), (16), HAR §16-99-3(v)

Sanction: License of Realty Group, already expired, is voluntarily revoked. Fine of \$5,000.00 assessed to Glenn Nishihara.

**Realty Group
Properties, LLC**
RB 17692

Case No. REC 2010-275-L

Allegations: Realty Group Properties, LLC's license expired on 12/31/10. Sometime in 2010 discrepancies or questions arose regarding client trust account handling and management that were brought to RICO's attention by the Respondent's former principal and principal broker. Respondent represents that any alleged discrepancies and/or mishandling of a client trust account was not intentional, any alleged errors were corrected, at no time were the firm's clients or customers in jeopardy, no clients or customers suffered harm, and, no client, customer or member of the public complained about the firm's operations. Respondent, therefore, does not admit to the RICO allegations set forth and Respondent denies having violated any licensing law or rule. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing in this matter.

Violations: HRS §436B-19(7), §467-14(8), (16), HAR §16-99-3(v)

Sanction: License of Realty Group Properties, LLC, expired, is voluntarily revoked.

Administrative Actions (cont. from page 12)

June 2017

David G. Gravelle
dba Gravelle Group
RB 18603

Case No. REC 2016-53-L
Dated 6/30/17

Allegations:

On or around 9/10/09 the Respondent, who was also licensed in California at the time, was disciplined by the California Department of Real Estate (hereafter "California Discipline").

The Respondent did not disclose the California Discipline in writing to the Commission within thirty days of 9/10/09, and, the Respondent answered "NO" to the 2010 Hawaii license renewal question that asks about prior discipline in Hawaii or any other jurisdiction. The Respondent self-disclosed the California Discipline eventually in writing through his 2016 Hawaii license restoration application.

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

Sanctions:

Voluntary revocation of Respondent's license.

Elena P. Walker
RS 39920

Case No. REC 2017-89-L
Dated 6/30/17

Allegations:

In or around 2016 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"). See HRS § 291E-61. The Respondent fulfilled all Court-imposed terms and conditions of the Conviction, and, reported the Conviction in writing to the Commission when renewing the license.

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

Sanctions:

Fine of \$500.00.

Rebekah D. Wright
RS 74680

Case No. REC 2016-77-L
Dated 6/30/17

Allegations:

In or around 2016, 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), HRS § 436B-19(14), and, HRS § 436B-19(17)

Sanctions:

Fine of \$500.00.

Elena P. Walker
RS 39920

Case No. REC 2014-134-L
Dated 6/30/17

Allegations:

Between 2005-2012, the Respondent had money judgments entered against her here in Hawaii by private parties, and, involuntary liens filed against her by Maui County, the Hawaii State Tax Department and the United States IRS. Some of the liabilities have been satisfied. Some are outstanding still.

Respondent Representations

Respondent represents that although she has experienced financial problems in the past, she has paid off some of her liabilities, her financial record or reputation has not impacted her real estate practice in a negative manner, she has never harmed or injured a real estate customer or client, and, she has always reported information to the Commission when required to. Respondent admits that there are judgments and

liens in existence against her today, but, denies having violated any licensing law or rule. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expense of proceeding with a hearing in this matter.

Violations: HRS § 467-14(20) and, HRS § 467-14(13).

Sanctions:

Fine of \$1,000.00.

Without waiving any legal right or protection that Respondent is or may be entitled to under state or federal law, Respondent agrees to make best efforts to address the outstanding judgments and liens that exist on her record as of today.

(cont. page 14)

Administrative Actions (cont. from page 13)

Janet C. Howell, a.k.a. or d.b.a. Fantasy Island Hawaii Vacation Rentals, a real estate salesperson
RS 59801

Case No. REC 2006-198-L
Dated 6/30/17

Introduction:

On December 9, 2016, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), by and through its attorney, Esther Brown, Esq., filed a petition for disciplinary action against the real estate salesperson's license of Janet C. Howell ("Respondent"). The matter was duly set for hearing on March 7, 2017, and the notice of hearing and pre-hearing conference was transmitted to the parties. After unsuccessful efforts to serve Respondent with the petition and notice of hearing and prehearing conference, Petitioner was granted leave to serve the Petition for Disciplinary Action; Demand for Disclosure; and Notice of Hearing and Pre-Hearing Conference, on Respondent by publication. Service by publication was effected on February 10, 2017.

On March 7, 2017, the hearing was convened by the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 467. Petitioner was represented by its attorney, Esther Brown, Esq. Respondent failed to appear either in person or by representation.

Findings of Fact:

Respondent was originally licensed as a real estate salesperson by the Real Estate Commission ("Commission") on August 28, 2001. Respondent's real estate salesperson's license, License No. RS 59801, expired on December 31, 2010.

Between October 7, 2003 and April 28, 2009 when her license was inactivated, Respondent was affiliated as a real estate salesperson with The Prudential Maui Realtors, Inc., dba Maui Beachfront Rentals ("PMR").

At all relevant times, PMR was a licensed real estate broker. Its principal broker was John Skenderian and its office manager was Natalie Fernandez.

Both the principal broker and the office manager regularly informed its salespersons, including Respondent, that all real estate transactions must be processed through PMR.

Unbeknownst to PMR, between 2003 and 2008, Respondent entered into at least 19 property management agreements with the respective property owners to manage their property.

None of the 19 property management transactions were processed through PMR and neither its principal broker nor its office manager were aware of Respondent's property management business. Instead, Respondent processed the rental income she received from the rental of the properties through her personal Bank of Hawaii account.

Respondent's property management activities were performed by Respondent through her dba, "Fantasy Island Vacation Rentals". Fantasy Island Vacation Rentals was never licensed to engage in real estate activity in Hawaii.

Order:

Violations: HRS §§467-1, 467-14(6), (8), and (13), 4368-19(6), (7) and (16), along with HAR §§16-99-3(b), 16-99-4(a), (d), (g), and (i).

The undisputed evidence proved that Respondent engaged in extensive property management / rental activities between 2003 and 2009 as "Fantasy Island Hawaii Vacation Rentals", unbeknownst to PMR. Fantasy Island Hawaii Vacation was never licensed to engage in real estate activity in Hawaii. In the course of her rental business, Respondent entered into rental agreements directly with the property owners and used her personal bank account rather than a client trust to receive and pay the owners the proceeds from the rentals. On this record, the Hearings Officer concludes that Respondent violated each of the foregoing charges.

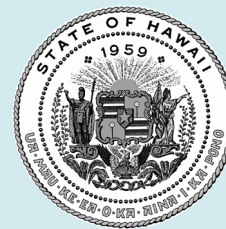
Sanctions:

Fine of \$25,000.00 and costs of \$583.11 that resulted when Petitioner was compelled to serve the notice of hearing on Respondent by publication.

Revocation of license.

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	808-551-6961
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 ext.102
OnCourse Learning Corporation ProSchools	800-299-2207
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



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Continuing Education Providers

Abe Lee Seminars	808-942-4472	International Association of Certified	303-225-9149
All Islands Real Estate School	808-564-5170	Home Inspectors (InterNACHI)	917-488-5694
American Dream Real Estate School, LLC	720-322-5470	International Council of	917-488-5694
At Your Pace Online, LLC	877-724-6150	Shopping Centers, Inc.	
The Berman Education Company, LLC	808-572-0853	Kauai Board of Realtors	808-245-4049
Bly School of Real Estate	808-738-8818	McKissock, LLC	800-328-2008
Building Industry Association of Hawaii	808-629-7505	Shari S. Motooka-Higa	808-492-7820
Carol Ball School of Real Estate	808-871-8807	OnCourse Learning Corporation	800-532-7649
The CE Shop, Inc.	888-827-0777	dba Career WebSchool	
CMPS Institute, LLC	888-608-9800	OnCourse Learning Corporation	800-299-2207
Coldwell Banker Pacific Properties Real Estate School	808-551-6961	dba ProSchools	
Continuing Ed Express, LLC	866-415-8521	Preferred Systems, Inc.	888-455-7437
The Council of Residential Specialists	800-462-8841	Ralph Foulger's School of Real Estate	808-239-8881
Eddie Flores Real Estate Continuing Education	808-951-9888	Realtors' Association of Maui, Inc.	808-873-8585
Hawaii Association of Realtors	808-733-7060	REMI School of Real Estate	808-230-8200
Hawaii Business Training	808-250-2384	Russ Goode Seminars	808-597-1111
Hawaii CCIM Chapter	808-528-2246	Servpro Industries Inc.	615-451-0200
Hawaii Island Realtors	808-935-0827	USA Homeownership Foundation, Inc., dba Veterans Association of Real Estate Professionals (VAREP)	951-444-7363
Ho'akea LLC dba Ku'iwalu	808-539-3580	Vitousek Real Estate Schools, Inc.	808-946-0505
Honolulu Board of Realtors	808-732-3000	West Hawaii Association of Realtors	808-329-4874
Institute of Real Estate Management Hawaii Chapter #34 (IREM)	808-384-2801		

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**

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, 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 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at 586-2643 to submit your request.