

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

REAL ESTATE COMMISSION      2005 MAR 28 P 2: 27  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'S OFFICE  
STATE OF HAWAII

In the Matter of the	)	REC-2001-210-L
Real Estate Salesperson's License of	)	
	)	COMMISSION'S FINAL ORDER
ANDREA M. STALHUT,	)	
	)	
and the	)	
	)	
Real Estate Broker's Licenses of	)	
	)	
STEPHEN W. HOGIN, and SRH, INC.,	)	
dba ERA MAUI REAL ESTATE,	)	
	)	
Respondents.	)	
_____	)	

**COMMISSION'S FINAL ORDER**

On December 21, 2004, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Real Estate Commission ("Commission"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties, and the parties were provided an opportunity to file exceptions.

On January 6, 2005, the Department of Commerce and Consumer Affairs, State of Hawai'i ("Petitioner"), by and through its attorney Daria A. Loy-Goto, filed Petitioner's Exceptions to the Hearings Officer's Recommended Order as to Andrea M. Stalhut.

Respondents Andrea M. Stalhut, Stephen W. Hogin, and SRH, Inc., dba ERA Maui Real Estate, did not file written exceptions or a statement in support of the Hearings Officer's recommended decision.

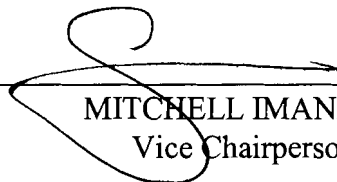
After considering the entire record of these proceedings, the Commission adopts the Hearings Officer's proposed findings of fact and conclusions of law. The Commission finds and concludes that Respondent Stalhut violated the provisions of Hawai'i Revised Statutes

("HRS") §§436B-19(7), and 467-14(13), and Hawai'i Administrative Rules ("HAR") §16-99-3(f) by executing an "Existing 'As Is' Condition Addendum" as "Cynthia Barbieto", without any disclosure or means to distinguish Respondent Stalhut's capacity or authority to act on behalf of Ms. Barbieto, and without the express permission of Ms. Barbieto to do so.

The Commission also finds and concludes that the preponderance of the evidence did not prove that Respondents Hogin and SRH violated any of the provisions of HRS and HAR cited in the Petition for Disciplinary Action, and the Commission therefore dismisses all charges against Respondents Hogin and SRH.


For the violations found above, the Commission orders Respondent Stalhut to pay a fine of \$500.00 within sixty (60) days from the date of the Commission's final order.

DATED: Honolulu, Hawai'i, March 28, 2005.


  
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MITCHELL IMANAKA  
Vice Chairperson

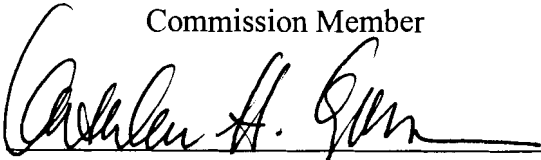
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CAROL MAE A. BALL  
Commission Member

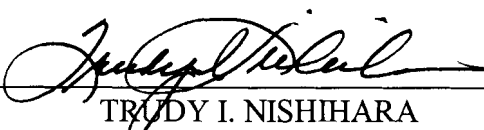
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Commission Member

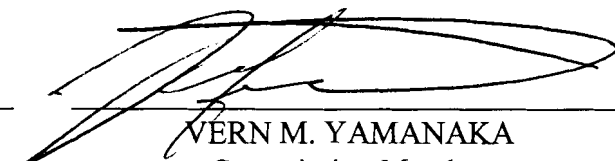
  
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IRIS R. OKAWA  
Commission Member

  
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JOHN OHAMA  
Chairperson

  
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LOUIS E. ABRAMS  
Commission Member

  
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KATHLEEN H. KAGAWA, Ph.D.  
Commission Member

  
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TRUDY I. NISHIHARA  
Commission Member

  
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VERN M. YAMANAKA  
Commission Member



attorney Robert Sadaoka. Respondents Stalhut and Hogin were present and appeared pro se, and Respondent Hogin also appeared on behalf of Respondent SRH.

Having reviewed and considered the evidence and arguments presented by the parties, as well as the entire record of these proceedings, the undersigned Hearings Officer hereby sets forth the following findings of fact, conclusions of law, and recommended order.

## **II. FINDINGS OF FACT**

1. Respondent Stalhut was at all relevant times alleged herein licensed as a real estate salesperson by the Real Estate Commission, State of Hawai'i ("Commission"), License No. RS 46609.

2. Respondent Hogin was at all relevant times alleged herein licensed as a real estate broker by the Commission, License No. RB 12320.

3. Respondent SRH was at all relevant times alleged herein licensed as a real estate broker by the Commission, License No. RB 14272, and at all times alleged herein, Respondent Hogin was the principal broker for Respondent SRH.

4. As of the date of the hearing, Respondents' business address was 225 Piikea Street, Suite 92, Kihei, Hawai'i 96753, and the last known mailing address for Respondents was P. O. Box 525, Kihei, Hawaii 96753.

5. In or around 1998, Cynthia Barbieto retained Respondents to manage Ms. Barbieto's apartment located at 140 Uwapo Street, Kihei, Hawai'i. During the relevant time periods, Ms. Barbieto resided in the City and County of Honolulu. At all relevant times herein, Respondent Stalhut was primarily responsible for managing Ms. Barbieto's apartment, and Ms. Barbieto only dealt with Respondent Stalhut.

### **A. Property Management and Request for Accounting**

6. In May of 1999, Respondents provided Ms. Barbieto with a monthly "Cash Flow" report pertaining to the rental income from Ms. Barbieto's apartment. Ms. Barbieto subsequently disputed an entry which debited her account for the monthly rental commission of \$65.00. Ms. Barbieto was of the belief that because the check from the renter had been dishonored, Respondents should not have been entitled to any commission for that period, and Ms. Barbieto believed she should have been credited the \$65.00 commission that Respondents had taken from the account. While Respondent Stalhut acknowledged said

error, no adjustment was ever made to all subsequent monthly "Cash Flow" reports. Despite demand to correct the balances on the "Cash Flow" reports and to reimburse \$130.00 to the account, Respondents have refused to do so.

7. In December of 1999, Respondents provided Ms. Barbieto with a monthly "Cash Flow" report pertaining to the rental income for the apartment. Ms. Barbieto disputed an entry which double-charged Ms. Barbieto the monthly rental commission of \$65.00. While Respondent Stalhut acknowledged said error and sent a corrected "Cash Flow" report indicating the proper rental commission of \$65.00, all subsequent "Cash Flow" reports showed an account balance which incorporated the initial double-charge. Despite demand to correct these balances and to reimburse \$65.00 to the account, Respondents have refused to do so.

8. By memo dated February 23, 2001, Ms. Barbieto informed Respondent Stalhut of the accounting discrepancies and requested Respondent Stalhut look into the matter. Ms. Barbieto also included copies of the May and December 1999 cash flow reports.

9. On March 19, 2001, Ms. Barbieto sent Respondent Stalhut an email to follow-up her February 23, 2001 memo to Respondent Stalhut.

10. On or about April 2, 2001, Respondent SRH issued a check to Ms. Barbieto in the amount of \$67.50, which was subsequently negotiated on May 17, 2001.

11. By memorandum dated April 16, 2001, Ms. Barbieto asked Respondent Stalhut to provide copies of invoices for cleaning bills for Ms. Barbieto's apartment.

12. By memorandum dated May 10, 2001, Ms. Barbieto renewed her request for Respondent Stalhut to provide an explanation regarding the accounting discrepancies for Ms. Barbieto's apartment.

13. By letter dated May 10, 2001, Respondent Stalhut responded to Ms. Barbieto's fax dated April 16, 2001, and informed Ms. Barbieto that Respondent Stalhut did not feel that Ms. Barbieto was owed any money. However, Respondent Stalhut did not provide any kind of accounting.

14. By memorandum dated May 14, 2001, Ms. Barbieto responded to Respondent Stalhut's May 10, 2001 letter, and Ms. Barbieto renewed her request for Respondent Stalhut to provide an explanation regarding the accounting discrepancies for Ms. Barbieto's apartment.

15. Subsequently, Ms. Barbieto filed a complaint with Petitioner because Ms. Barbieto was not able to obtain the documents she requested from Respondents, or a satisfactory explanation from Respondents regarding her concerns.

16. By letter dated October 25, 2001, addressed to Supervising Investigator Robert B. Hottenstein, Regulated Industries Complaints Office, Respondent Stalhut responded to Ms. Barbieto's complaint against Respondents.

17. At the hearing, Respondents Stalhut and Hogin testified that Respondents had provided additional services to Ms. Barbieto which were not charged to Ms. Barbieto.

18. As of the date of the hearing, Respondents had not provided the invoices to Ms. Barbieto, nor given Ms. Barbieto an accounting of the monies in dispute.

#### **B. The Sale of Ms. Barbieto's Apartment**

19. On or about January 21, 2001, Ms. Barbieto executed a listing agreement with Respondents for the sale of her apartment. Respondent Stalhut was the real estate salesperson with the primary responsibility for the sale of Ms. Barbieto's apartment.

20. On or about February 4, 2001, Respondents received a Deposit Receipt Acceptance and Offer ("DROA") from a prospective purchaser of Ms. Barbieto's apartment. The DROA was signed by Respondent Hogin as the principal broker for the owner, Ms. Barbieto.

21. On February 5, 2001, Respondents drafted a counteroffer which purportedly added an "As Is Addenda," and faxed the document to Ms. Barbieto for her signature. Although the counteroffer drafted by Respondents stated the "AS IS Addendum" was attached, the "As Is Addenda" was not attached to the counteroffer prepared by Respondents and faxed to Ms. Barbieto. Ms. Barbieto signed the counteroffer and faxed the document back to Respondents.

22. On or about February 10, 2001, Respondent Stalhut prepared an "Existing 'As Is' Condition Addendum" in regards to Respondents' counteroffer for Ms. Barbieto's apartment. Respondent Stalhut signed Ms. Barbieto's name on the seller's signature line on the February 10, 2001 "Existing 'As Is' Condition Addendum." At no time did Ms. Barbieto give Respondent Stalhut permission or authorization to sign Ms. Barbieto's name on said the "Existing 'As Is' Condition Addendum."

23. The first time Ms. Barbieto noticed that someone had executed Ms. Barbieto's name on the "Existing 'As Is' Condition Addendum" was at the closing of the transaction at the escrow office in Honolulu. The escrow agent requested that Ms. Barbieto initial the signature that appeared on the "Existing 'As Is' Condition Addendum", but Ms. Barbieto declined because it was not her signature. Consequently, the escrow agent made a copy of the "Existing 'As Is' Condition Addendum", deleted the signature, and then had Ms. Barbieto sign the "Existing 'As Is' Condition Addendum".

24. Subsequently, Ms. Barbieto contacted Respondent Stalhut regarding the "Existing 'As Is' Condition Addendum", and Respondent Stalhut admitted that she had signed the document for Ms. Barbieto because the escrow company needed to have the document executed right away. Ms. Barbieto subsequently contacted the escrow company and was told that there was no immediate need to have Ms. Barbieto execute the "Existing 'As Is' Condition Addendum" at that time, and that Ms. Barbieto could have executed the "Existing 'As Is' Condition Addendum" at closing.

25. At all times referred to in paragraphs 8 through 14, above, Respondent Hogin was responsible for supervising the real estate activities of Respondent Stalhut. Ms. Barbieto subsequently informed Respondent Hogin of her disputes and concerns regarding Respondent Stalhut, but Respondent Hogin was not able to address Ms. Barbieto's substantive concerns.

26. At the hearing, the Respondents and Ms. Barbieto agreed that the inclusion of the "Existing 'As Is' Condition Addendum" was of direct benefit to Ms. Barbieto.

27. At the hearing, Respondent Stalhut testified that she had received Ms. Barbieto's verbal authorization to execute the "Existing 'As Is' Condition Addendum" on Ms. Barbieto's behalf, and that Respondent Stalhut would normally sign such documents with her own signature on behalf of her client. In this particular case, Respondent Stalhut could not recall why she did not execute the "Existing 'As Is' Condition Addendum" using her own name and disclosure regarding Ms. Barbieto's authorization for Respondent Stalhut to sign the document in Ms. Barbieto's stead.

28. At the hearing, the Respondent Hogin testified that as the principal broker for Respondent SRH, he would not allow any of his real estate salespersons to sign documents on behalf of their clients using the clients' ostensible signatures.

29. An examination of the “Existing ‘As Is’ Condition Addendum” reveals that Respondent Stalhut’s signature as “Cynthia Barbieto” does not resemble Ms. Barbieto’s actual signature.

### **III. CONCLUSIONS OF LAW**

Petitioner has charged Respondents with violating the following provisions of HRS and Hawai‘i Administrative Rules (“HAR”):

- a. HRS §436B-19 (7) (professional misconduct);
- b. HAR §16-99-3(f) (licensee shall see that financial obligations and commitments regarding real estate transactions are in writing, expressing the exact agreements of the parties and setting forth essential terms and conditions);
- c. HRS §467-14(7) (failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee); and
- d. HRS §467-14(13) (violating HRS Chapter 467, to wit, HRS § 467-1.6).

#### **A. Ms. Barbieto’s Request for an Accounting**

The preponderance of the evidence established that Ms. Barbieto had asked Respondent Stalhut and later Respondent Hogin for an explanation of certain accounting discrepancies regarding the rental and maintenance of her apartment. The preponderance of the evidence also established that until the date of the hearing, Respondents had not provided Ms. Barbieto with a comprehensive response to her concerns.

Although Respondents may have in fact provided additional services to Ms. Barbieto for which Respondents did not charge Ms. Barbieto, Respondents have a professional responsibility to provide an accounting within a reasonable time.

On the other hand, on or about April 2, 2001, Respondent SRH did issue a check to Ms. Barbieto in the amount of \$67.50 to cover the reimbursement of the contested commission.

In light of the Respondents’ reimbursement to Ms. Barbieto on April 2, 2001, the Hearings Officer must conclude that the preponderance of the evidence did not prove that Respondents had any funds belonging to Ms. Barbieto after April 2, 2001.



**B. Respondent Stalhut's Signing of the "As Is Addendum"**

The preponderance of the evidence established that Respondent Stalhut executed the "Existing 'As Is' Condition Addendum" as "Cynthia Barbieto", without any disclosure or means to distinguish Respondent Stalhut's capacity or authority to act on behalf of Ms. Barbieto. Furthermore, the Hearings Officer finds the testimony of Ms. Barbieto to be clear and convincing and accordingly concludes that Respondent Stalhut did not have Ms. Barbieto's authority or permission to execute the "Existing 'As Is' Condition Addendum" as "Cynthia Barbieto." As such, Respondent Stalhut's signature as "Cynthia Barbieto" had the capacity to mislead the buyer or anyone else that might examine the document, to believe that Ms. Barbieto had actually signed the "Existing 'As Is' Condition Addendum."<sup>1</sup>

The Hearings Officer also finds the testimony of Respondent Hogin to be credible and persuasive in that as the principal broker for Respondent SRH, he would not permit real estate salespersons to execute documents on behalf of clients using the clients' ostensible signatures.

**IV. RECOMMENDED ORDER**

For the reasons set forth above, the Hearings Officer recommends that the Commission find and conclude that Respondent Stalhut violated the provisions of HRS §§436B-19(7), and 467-14(13), and HAR §16-99-3(f) by executing the "Existing 'As Is' Condition Addendum" as "Cynthia Barbieto", without any disclosure or means to distinguish Respondent Stalhut's capacity or authority to act on behalf of Ms. Barbieto, and without the express permission of Ms. Barbieto to do so.

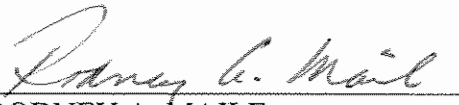
The Hearings Officer would also recommend that the Commission find and conclude that the preponderance of the evidence did not prove that Respondents Hogin and SRH violated any of the provisions of HRS and HAR, and therefore dismiss all charges against Respondents Hogin and SRH.

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<sup>1</sup>During the course of Respondent Stalhut's testimony at the hearing, Respondent Stalhut appeared to indicate that she may have executed other documents for other clients, and when she did so, she would sign the document and note that it was on behalf of the client, and not the actual signature of the client.

For the violation of HRS §§436B-19(7), and 467-14(13), and HAR §16-99-3(f), the Hearings Officer would recommend that the Commission order Respondent Stalhut to pay a fine of \$500.00 within sixty (60) days from the date of the Commission's final order.

DATED: Honolulu, Hawai'i, December 21, 2004.

  
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RODNEY A. MAILE  
Senior Hearing Officer  
Department of Commerce and  
Consumer Affairs