

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2006 MAY 26 P 2:43

HEARINGS OFFICE

REAL ESTATE COMMISSION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the	)	REC-2001-33-L; REC-2001-35-L;
	)	REC-2001-36-L; REC-2001-37-L;
Real Estate Broker's License of	)	REC-2001-38-L; REC-2001-44-L;
	)	REC-2001-45-L; REC-2001-48-L;
KARL F. LINGENFELDER,	)	REC-2001-57-L; REC-2001-60-L;
dba KALA PROPERTIES,	)	REC-2001-64-L; REC-2001-66-L;
	)	REC-2001-70-L; REC-2001-74-L;
Respondent.	)	REC-2001-84-L; REC-2001-89-L;
	)	REC-2001-98-L
)	
)	
	)	COMMISSION'S FINAL ORDER
)	
)	
)	

COMMISSION'S FINAL ORDER

On April 3, 2006, the duly appointed Hearings Officer submitted her Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Real Estate Commission ("Commission"). The parties were given an opportunity to file written exceptions. On April 19, 2006, the Commission granted Karl F. Lingenfelder, dba Kala Properties' request for an extension of time to May 4, 2006 to file exceptions. On May 3, 2006, Karl F. Lingenfelder, dba Kala Properties ("Respondent") filed his written exceptions and request for oral argument. On May 12, 2006, the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs ("Petitioner") filed a statement in support of the Hearings Officer's recommended decision. The Notice of Opportunity to Present Oral Arguments was transmitted to the parties.

At its regularly scheduled meeting on May 26, 2006, the Commission heard oral arguments from the parties. John T. Hassler, Esq. represented Petitioner. Lorrin A. Kau, Esq. represented Respondent.

Upon review of the entire record of this proceeding, including the written exceptions, the Commission is of the opinion that the exceptions do not warrant a modification or reversal of the Hearings Officer's findings of fact or conclusions of law. Accordingly, the Commission adopts the Hearings Officer's proposed decision as the Commission's Final Order and finds and concludes that Respondent violated Hawaii Revised Statutes §§ 467-14(8), 436B-19(9) and Hawaii Administrative Rules § 16-99-3, and dismisses the charge that Respondent violated HRS § 467-14(7).

For the violations found, the Commission orders that Respondent's license be suspended for two (2) years and Respondent is required to immediately submit all indicia of licensure to the Executive Officer of the Commission. Indicia of licensure include wall certificates and pocket identification cards.

The Commission also orders Respondent to (1) pay a fine in the amount of \$3,000.00 within 60 (sixty) days of the Commission's Final Order and (2) take and successfully complete, at his own expense, an education course or courses to be determined by the Commission. The education course or courses ordered are in addition to, and do not take the place of, any continuing education requirements under HRS Chapter 467 and HAR Title 16, Chapter 99. Within ten (10) calendar days from the date Respondent receives the Commission's Final Order, Respondent shall submit a written request to the Executive Officer of the Commission to find out which education course or courses Respondent will be required to take. Within thirty (30) days from the receipt of Respondent's written request, the Commission shall inform Respondent: 1) which education course or courses Respondent will be required to take and successfully complete; 2) when the education course or courses must be completed by, and 3) when the verification of successful completion must be submitted to the Commission. Failure to complete the education course or courses as required by the Commission may be deemed a breach of the Commission's Final Order and may constitute a basis for further disciplinary proceedings being initiated against Respondent.

Payment of the fine and successful completion of the education course or courses, as well as any other conditions the Commission may deem appropriate, are conditions for reinstatement of Respondent's license.

DATED: Honolulu, Hawaii: [May 26, 2006]

TRUDY I. NISHIHARA
Chairperson

/s/ IRIS R. OKAWA

IRIS R. OKAWA
Vice Chairperson

/s/ LOUIS E. ABRAMS

LOUIS E. ABRAMS
Commission Member

/s/ CAROL MAE A. BALL

CAROL MAE A. BALL
Commission Member

KATHLEEN H. KAGAWA, Ph.D.
Commission Member

/s/ STANLEY M. KURIYAMA

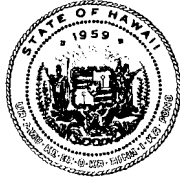
STANLEY M. KURIYAMA
Commission Member

/s/ MICHELE SUNAHARA LOUDERMILK

MICHELE SUNAHARA LOUDERMILK
Commission Member

VERN M. YAMANAKA
Commission Member

Vacant



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2006 APR -3 A 9: 44

HEARINGS OFFICE

REAL ESTATE COMMISSION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

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Respondent.)	REC-2001-84-L; REC-2001-89-L;
)	REC-2001-98-L
)	
)	HEARINGS OFFICER'S FINDINGS OF
)	FACT, CONCLUSIONS OF LAW AND
)	RECOMMENDED ORDER;
)	APPENDICES "A" AND "B"
)	

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER

I. INTRODUCTION

On July 26, 2002, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the real estate broker's license of Karl F. Lingenfelder, dba Kala Properties ("Respondent"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, 436B and 467 and the Notice of Hearing and Pre-Hearing Conference was transmitted to the parties.

By agreement of the parties, the hearing was continued from October 17, 2002 to March 18 and 19, 2003. On March 3, 2003, Respondent, by and through his attorney, David

W. Cain, Esq. orally moved to continue the hearing because he had just been retained by Respondent. Over Petitioner's objection, Respondent's oral motion was granted, and the hearing was continued to April 8 and 9, 2003.

On March 31, 2003, Respondent filed a Motion to Continue Hearing. On April 2, 2003, Petitioner filed a memorandum in opposition to the motion. A hearing on the motion was held on April 2, 2003, and an order granting Respondent's motion was issued on April 4, 2003, and the hearing was rescheduled to June 24, 25 and 26, 2003.

The hearing convened on June 24, 2003 and reconvened on June 27, 2003. Petitioner was represented by John T. Hassler, Esq. and Respondent was present and represented by Mr. Cain. An additional hearing date was scheduled for August 8, 2003. On August 6, 2003, Respondent's counsel informed Petitioner and the Hearings Officer that Respondent had been hospitalized, and on that basis, the hearing was taken off the calendar.

On October 24, 2003, Petitioner filed a Motion to Set Hearing Date. Respondent was asked to file a response on or before November 7, 2003. No response was filed by Respondent, so on November 13, 2003, the motion was granted, and the matter was reset for hearing on January 8, 2004. Mr. Cain received the Order Granting Motion to Set Hearing Date on November 14, 2003.

On January 8, 2004, the hearing was reconvened by the undersigned Hearings Officer. Petitioner was represented by Mr. Hassler. Respondent and/or his attorney failed to enter an appearance. The hearing concluded on January 8, 2004.

On January 22, 2004, Respondent filed a Motion to Reopen Hearing, and a hearing on the motion was scheduled for February 11, 2004. On February 9, 2004, Petitioner filed a memorandum in opposition to the motion. Respondent filed an Objection to Opposition to Reopen and Motion to Strike on February 9, 2004. On February 11, 2004, a hearing on the motion was held, with Petitioner represented by Mr. Hassler, and Respondent represented by Mr. Cain. Respondent was also present at the hearing. While Respondent did not show good cause for reopening the hearing, due to the severity of the sanctions that may be imposed if the allegations in the Petition were proven, the Hearings Officer granted Respondent's motion, and the hearing was reset for March 11, 2004.

On March 5, 2004, the parties agreed to take the March 11, 2004 hearing off the calendar pending the Real Estate Commission's ("Commission") consideration of a settlement agreement.

At a May 26, 2005, pre-hearing conference attended by Mr. Hassler on behalf of Petitioner and Lorrin A. Kau, Esq. on behalf of Respondent, the parties agreed to reset the hearing to December 6, 7, and 8, 2005.

On August 24, 2005, the Hearings Officer issued an Order Re Collateral Estoppel, and concluded that the Partial Final Award of Arbitrator and Final Judgment shall have collateral estoppel effect.

On November 8, 2005, the Hearings Officer issued an Order Denying Respondent's Motion to Strike and/or to Exclude Evidence, filed on September 9, 2005.

On November 16, 2005, Respondent filed a Motion to Change Hearing Location to Maui. A hearing on the motion was scheduled for November 22, 2005. On December 7, 2005, the Hearings Officer granted Respondent's motion. The parties agreed to reschedule the hearing to January 18, 19 and 20, 2006.

On December 6, 2005, subpoenas filed by Respondent and directed to out-of-state witnesses were returned to Respondent because the Office of Administrative Hearings does not have jurisdiction to subpoena out-of-state witnesses.

On December 20, 2005, Petitioner filed a Motion to Reopen State's Case-in-Chief. A hearing on the motion was held on December 28, 2005, and on January 4, 2006, the Hearings Officer issued an order granting Petitioner's motion.

On January 18, 2006, the hearing was reconvened in Maui, Hawaii. Petitioner was represented by Mr. Hassler and Respondent was present and represented by Mr. Kau. Petitioner withdrew his request for restitution. Closing arguments were heard on January 19, 2006 in Honolulu, with Respondent present and represented by Mr. Kau, and Petitioner represented by Mr. Hassler.

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

II. FINDINGS OF FACT

1. The Commission licensed Respondent as a real estate broker on May 24, 1996, RB 16859. Respondent's license expires on December 31, 2006.

2. Most of the units at the Kihei Kai Condominium, aka Kihei Kai Resort have been used as vacation rentals by their owners. From September 2000 through January 2001, Respondent was retained by owners of at least seventeen units to manage their unit as a vacation rental.

3. Respondent sent the owners an Agreement to Manage Individual Condominium at Kihei Kai Resort, Kihei, Maui ("Agreement"). Paragraph 16.2 of the Agreement stated:

From the Gross Rental Income, Agent will pay on your behalf the 20% Management Fee, which covers commissions, housekeeping, laundry, linen service expense, guest supplies associated with the rental of the Condominium, or Amenities (Pineapples). The same as current practice.

The owners signed the agreement and sent it back to Respondent. Respondent sent back an executed copy of the contract with a modification to paragraph 16.2 as follows:

From the Gross Rental Income, Agent will pay on your behalf the 20% Management Fee (which covers commissions and office expenses), housekeeping, laundry, linen service expense, guest supplies associated with the rental of the Condominium or Amenities (Pineapples). The same as current practice.

Respondent admitted that he modified the Agreement without the unit owners' permission, but believed that it was a clarification and that he did not change the language in a substantive way.

4. The Agreement provided that either party may elect to terminate the Agreement at any time, with or without cause by giving notice to the other party not less than thirty (30) days prior to the date of intended termination. This paragraph also provides that the unit owner must honor reservations made by Respondent for a period of ninety days from the date of termination.

5. Paragraph 5 of the Agreement provided that distribution to owners shall be made monthly and shall be mailed no later than the 10th day of the following month.

6. Paragraph 10 of the Agreement provided that notices required to be given under the Agreement shall be in writing addressed to Respondent at Kihei Kai Resort, 61 North Kihei Road, Kihei, Hawaii 96753 or such other address as Respondent shall designate. Notice is deemed to have been given five (5) days after having been mailed via first class mail.

7. The Agreement also provided that Respondent's mailing address is: P.O. Box 448, Puunene, Maui, 96784.

8. After November 20, 2000, Respondent did not go to the resident manager's office at the Kihei Kai due to an incident with the resident manager which resulted in mutual restraining orders being issued against Respondent and the resident manager.

9. Several owners sent cancellation notices to Respondent's post office box between December 8, 2000 and December 13, 2000. Some owners believe that Respondent deliberately did not check his post office box, where the notices were sent. It is Respondent's position that he did not receive the notices until December 29, 2000, and accordingly, Respondent informed the owners that the termination date of the contracts was January 28, 2001.

10. In November and December 2000, Respondent issued checks to six unit owners which were not honored because of insufficient funds. Respondent explained that this was because the trust accounts were garnished without his knowledge.

11. Prior to Respondent becoming the managing agent, the unit owners established toll free and local phone numbers, an internet website and the Kihei Kai trade name to promote and facilitate the short-term rental of their units. The toll free and local phone numbers were answered at the Kihei Kai resident manager's office.

12. In January 2001, the toll free and local phone numbers were not ringing at the Kihei Kai resident manager's office. Respondent had the numbers transferred to a different location and arranged it so that the owners at Kihei Kai could not access their website.

13. On March 30, 2001, owners of eight units filed a lawsuit against Respondent for monies owed under their contracts, for return of the toll free and local phone numbers and internet websites, and to stop Respondent from using the Kihei Kai trade name. The matter was submitted to arbitration.

14. On December 10, 2001, Arbitrator E. John McConnell issued a Partial Final Award of Arbitrator, a copy of which is attached hereto and incorporated herein by reference as Appendix "A". It states in part:

The Arbitrator finds that Respondent KARL LINGENFELDER breached the written contracts with each of the Claimants by failing to pay rental income in amounts required by paragraph 20 of the contracts as amended by LINGENFELDER's letters dated November 22, 2000 and by failing to provide a full and complete accounting of the results of operations as required by the contract and HRS § 467-14.

. . .

The Arbitrator finds that each of the Claimants herein as an owner of a Kihei Kai condominium in the rental pool has a legally cognizable interest in the 800 toll free and local phone numbers, the internet website and the trade name Kihei Kai historically used by their agents to rent their units. The Arbitrator further finds that Respondent LINGENFELDER breached his duty of good faith and fair dealing under the contracts and committed the tort of conversion by wrongfully misappropriating the 800 numbers, website and trade name for his own use.

A final judgment confirming the arbitration award was entered in the Circuit Court of the Second Circuit on June 5, 2002.

14. The unit owners involved in the arbitration received closing statements and a 1099 form from Respondent in February 2001, but disputed the accounting provided by Respondent and believed that Respondent owed them more than what was stated in the closing statements.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating HRS §§ 467-14(7), 467-14(8), 436B-19(9) and Hawaii Administrative Rules § 16-99-3(u) which provides:

§ 467-14 Revocation, suspension and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

. . .

This decision has been redacted and reformatted for publication purposes and contains all of the original text of the actual decision.

(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;

(8) Any other conduct constituting fraudulent or dishonest dealings[.]

§ 436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

. . .

(9) Conduct or practice contrary to recognized standards of ethics for the licensed profession or vocation[.]¹

§ 16-99-3 Conduct. To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

. . .

(u) The licensee shall not add to or modify the terms of an instrument previously signed or initiated by a party to a transaction without written consent of all the parties.

The evidence presented established that after the owners signed and sent back the Agreement, Respondent changed the terms of the Agreement without the owners' written consent. The evidence presented also established that Respondent wrongfully misappropriated the 800 numbers, website and Kihei Kai trade name. The Hearings Officer finds that Respondent's conduct constituted fraudulent and dishonest dealings, in violation of HRS § 467-14(8), and conduct or practice contrary to recognized standards of ethics for the real estate profession in violation of HRS § 436B-19(9). Although Respondent argued that he only clarified the Agreement, the Hearings Officer concludes that Respondent modified the Agreement without the owner's written consent in violation of HAR § 16-99-3(u).

¹ Petitioner cited the Code of Ethics and Standards of Practice of the National Association of Realtors, Article 1, as the recognized standard of ethics for real estate licensees, a copy of which is attached hereto and incorporated herein by reference as Appendix "B".

This decision has been redacted and reformatted for publication by the National Association of Realtors, Article 1.

Petitioner also charged that Respondent violated HRS § 467-14(7) by failing to account for moneys due from November 2000 to January 2001 within a reasonable time. The evidence presented showed that Respondent accounted for those moneys in February 2001. Based on the evidence presented, the Hearings Officer finds that Respondent accounted for the moneys within a reasonable time, and accordingly, concludes that this charge should be dismissed.²

IV. RECOMMENDED ORDER

Based on the above, the Hearings Officer recommends that the Commission find and conclude that Respondent violated HRS §§ 467-14(8), 436B-19(9) and HAR § 16-99-3, and dismiss the charge that Respondent violated HRS § 467-14(7).

For the violations found, the Hearings Officer recommends that Respondent's license be suspended for two (2) years and that he pay a fine in the amount of \$3,000.00 within 60 (sixty) days of the Commission's Final Order.

The Hearings Officer also recommends that Respondent be required to take and successfully complete, at his own expense, an education course or courses to be determined by the Commission. The education course or courses ordered are in addition to, and do not take the place of, any continuing education requirements under HRS Chapter 467 and HAR Title 16, Chapter 99. Within ten (10) calendar days from the date Respondent receives the Commission's Final Order, Respondent shall submit a written request to the Executive Officer of the Commission to find out which education course or courses Respondent will be required to take. Within thirty (30) days from the receipt of Respondent's written request, the Commission shall inform Respondent: 1) which education course or courses Respondent will be required to take and successfully complete; 2) when the education course or courses must be completed by, and 3) when the verification of successful completion must be submitted to the Commission. Failure to complete the education course or courses as required by the Commission may be deemed a breach of the Commission's Final Order and may constitute a basis for further disciplinary proceedings being initiated against Respondent.

²The fact that the owners did not agree with the accounting provided by Respondent does not mean that Respondent failed to account for monies within a reasonable time.

Lastly, the Hearings Officer recommends that payment of the fine and successful completion of the education course or courses, as well as any other conditions the Commission may deem appropriate, be made conditions for reinstatement of Respondent's license.

DATED: Honolulu, Hawaii, [April 3, 2006].

/s/ SHERYL LEE A. NAGATA
SHERYL (LEE) A. NAGATA
Administrative Hearings Officer
Dept. of Commerce and Consumer Affairs

The Honorable E. John McConnell (Ret.)

33 N. Market Street, Suite 200
Wailuku, Hawaii 96793

Maui Phone (808) 244-6531
Fax (808) 242-4610
Oahu Phone (808) 523-1234

December 10, 2001

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Joy Yanagida, Esq.
Maluhia Professional Center
33 Maluhia Drive, Suite 201
Wailuku, HI 96793

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Gregory Burseau
Kala Properties
P.O. Box 448
Puunene, HI 96784

RECEIVED
COMPLIANCE OFFICE
JAN 22 23 PM '02
DEPARTMENT OF COMMERCE
AND CONSUMER AFFAIRS

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Karl F. Lingenfelder
Kala Properties
P.O. Box 448
Puunene, HI 96784

Re: Balistreri, et al. v. Lingenfelder, et al.
Case No. 78 115 00031 01 MAK (arbitration)

Dear Counsel and Parties:

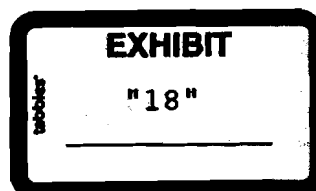
Enclosed is my Partial Final Award in the above-captioned matter.

Very truly yours,

/s/ E. JOHN McCONNELL

E. John McConnell

EJM:jl
Enclosure
cc: Peggy Kain (w/enc.)
counsel



APPENDIX "A"

This decision has been redacted and reformatted for publication purposes and contains all of the original text of the actual decision.

E. JOHN McCONNELL
33 N. Market Street, Suite 200
Wailuku, Hawaii 96793
Telephone: (808) 244-6531

ARBITRATOR

AMERICAN ARBITRATION ASSOCIATION

STATE OF HAWAII

BOB BALISTRERI, ROSANN BALISTRERI,)	CASE NO. 78 115 00031 01 MAK
JOHN BAWDEN, JUDY BAWDEN, JOHN)	
MONTFORT, STEVE MONTFORT,)	PARTIAL FINAL AWARD OF
MARGIE MONTFORT, RONALD G.)	ARBITRATOR
MILLER, DOROTHY A. MILLER,)	
NICHOLAS G. WILLIAMS, DEANN M.)	
WILLIAMS, PETE PARSONS, ANITA)	
PARSONS, EVERETT GLOVER CAROLINE)	
GLOVER, CHRIS HANSON-HUGHES,)	
)	
Plaintiffs,)	
)	
v.)	
)	
KARL LINGENFELDER, CHO, DBA KALA)	
PROPERTIES, GREGORY BURSEAU,)	
)	
Defendants.)	
)	

PARTIAL FINAL AWARD OF ARBITRATOR

The claims of Claimants BOB BALISTRERI, ROSANN BALISTRERI, JOHN BAWDEN, JUDY BAWDEN, JOHN MONTFORT, STEVE MONTFORT, MARGIE MONTFORT, RONALD G. MILLER, DOROTHY A. MILLER, NICHOLAS G. WILLIAMS, DEANN M. WILLIAMS, PETE PARSONS, ANITA PARSONS, EVERETT GLOVER CAROLINE GLOVER and CHRIS HANSON-HUGHES (“herein Claimants”) against KARL LINGENFELDER and GREGORY BURSEAU (herein “Respondents”) and the counterclaims of

LINGENFELDER and BURSEAU against Claimants came on for an arbitration hearing before the undersigned Arbitrator on November 28, 2001. Each of the parties was afforded a full and complete opportunity to offer evidence and to call and examine witnesses. Having been duly appointed herein pursuant to the procedures of the American Arbitration Association, having carefully considered the totality of the evidence in light of the claims of each of the parties, and being duly sworn, the Arbitrator hereby FINDS, CONCLUDES and AWARDS as follows:

1. The Arbitrator finds that Respondent KARL LINGENFELDER breached the written contracts with each of the Claimants by failing to pay rental income in amounts required by paragraph 20 of the contracts as amended by LINGENFELDER's letters dated November 22, 2000 and by failing to provide a full and complete accounting of the results of operations as required by the contract and HRS §467-14. Damages proven with reasonable certainty for such breach are hereby awarded to Claimants and against Respondent KARL LINGENFELDER as follows:

Claimants Bob and Rosann Balistreri	\$1,901.90
Claimants John and July Bawden	\$1,344.56
Claimants John, Steve and Margie Montfort	\$1,425.70
Claimants Ronald G. and Dorothy A. Miller	\$1,672.22
Claimants Nicholas G. and Deann M. Williams	\$2,223.75
Claimants Pete and Anita Parsons	\$1,682.93
Claimants Everett and Caroline Glover	\$ 742.01
Claimant Chris Hanson-Hughes	\$2,074.76

2. The Arbitrator finds that each of the Claimants terminated their contracts in accordance with paragraph 2.1 of the contracts.

3. The Arbitrator finds that each of the Claimants herein as an owner of a Kihei Kai condominium unit in the rental pool has a legally cognizable property interest in the 800 toll free and local telephone numbers, the internet websites and the trade name Kihei Kai historically used by

their agents to rent their units. The Arbitrator further finds that Respondent LINGENFELDER breached his duty of good faith and fair dealing under the contracts and committed the tort of conversion by wrongfully misappropriating the 800 numbers, website and trade name for his own use.

4. Respondents KARL LINGENFELDER and GREGORY BURSEAU are hereby ordered within ten (10) days of the issuance of this Partial Final Award to cease and desist from in any manner whatsoever using the telephone numbers 1-800-735-2357 and 808-879-2357 and, within said period, to take any and all actions necessary to effect transfer of said telephone numbers to the Claimants or their designee.

5. Respondents KARL LINGENFELDER and GREGORY BURSEAU are hereby ordered to within ten (10) days of the issuance of this Partial Final Award to cease and desist from in any manner whatsoever using the internet websites <http://www.Kiheikaimaui.com>, <http://www.Kiheikai.com>, <http://www.Kiheikairesort.com>, <http://www.Kiheikaicondos.com> and, within said period, to take any and all actions necessary to effect the transfer of said websites to the Claimants or their designee.

6. Respondents KARL LINGENFELDER and GREGORY BURSEAU are, effective ten (10) days following the issuance of this Partial Final Award, permanently enjoined from using the telephone number 1-800-735-2357 or 808-879-2357, the internet websites <http://www.Kiheikaimaui.com>, <http://www.Kiheikai.com>, <http://www.Kiheikairesort.com>, <http://www.Kiheikaicondos.com> or any trade or domain name containing the words Kihei Kai or Kihei kai or kihei kai.

7. The Arbitrator finds that certain of the Claimants have proved damages for the misappropriation of the telephone numbers, websites and trade name with reasonable certainty.

Accordingly, award is hereby entered in favor of those Claimants listed below and against Respondent KARL LINGENFELDER as follows:

Claimants John, Steve and Margie Montfort	\$1,800.75
Claimant Chris Hanson-Hughes	\$5,625.00
Claimants Bob and Rosann Balistreri	\$2,485.50
Claimants Ronald G. and Dorothy A. Miller	\$7,456.00

8. The Arbitrator further orders that any willful violation of the injunctive relief set forth in paragraphs 4, 5 and 6 above shall be assessed a civil penalty of \$100.00 for each day any such violation continues.

9. The Arbitrator finds that Claimant STEVE MONTFORT has failed to prove damages for the alleged assault against him by Respondent KARL LINGENFELDER on November 18, 2000. Accordingly, this claim is denied.

10. Except as provided in paragraph 11 below, this Partial Final Award is in full and final determination of all claims submitted to arbitration. All claims not specifically addressed are hereby denied.

11. The Arbitrator reserves jurisdiction for the sole purpose of determining the amount of attorneys' fees and costs (including the costs of arbitration), if any, which should be awarded Claimants. Claimants' counsel shall within ten (10) days of the issuance and service of this Partial Final Award submit a declaration in support of fees and costs. Respondents may file a response within ten (10) days thereafter. The Arbitrator will issue a Final Award within twenty (20) days of the final submission.

SO ORDERED this 10th day of December, 2001.

/s/ E. JOHN McCONNELL

E. JOHN McCONNELL, Arbitrator

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On December 10, 2001, before me personally appeared E. JOHN McCONNELL, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

WITNESS my hand and official seal.

Annetta L. Cook L.S.

Annetta L. Cook

(print name)
Notary Public, State of Hawaii
My Commission Expires: 5/17/2004

Code of Ethics

Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2000

<u>Preamble</u>		<u>Explanatory Notes</u>
<u>Duties to Clients and Customers</u> <i>(Articles 1-9)</i>	<u>Duties to the Public</u> <i>(Articles 10-14)</i>	<u>Duties to REALTORS®</u> <i>(Articles 15-17)</i>

Where the word Realtors® is used in this Code and Preamble, it shall be deemed to include REALTOR-ASSOCIATE® s .

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble...

Go to Top

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. Realtors® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which Realtors® should dedicate themselves, and for which they should be diligent in preparing themselves. Realtors®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow Realtors® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, Realtors® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify

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EXHIBIT

"24"

and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. (Amended 1/00)

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, Realtors® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where Realtors® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term Realtor® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, Realtors® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, Realtors® pledge to observe its spirit in all of their activities and to conduct their business in accordance with the tenets set forth below.

Duties to Clients and Customers

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Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, Realtors® pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client's interests is primary, but it does not relieve Realtors® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, Realtors® remain obligated to treat all parties honestly. (Amended 1/93)

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Standard of Practice 1-1

Realtors®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. (Amended 1/93)

Standard of Practice 1-2

The duties the Code of Ethics imposes are applicable whether Realtors® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on Realtors® acting in non-agency capacities.

As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a Realtor® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the Realtor® or the REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. (Adopted 1/95, Amended 1/99)

Standard of Practice 1-3

Realtors®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

Standard of Practice 1-4

Realtors®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. (Amended 1/93)

Standard of Practice 1-5

Realtors® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. (Adopted 1/93)

Standard of Practice 1-6

Realtors® shall submit offers and counter-offers

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objectively and as quickly as possible. (Adopted 1/93, Amended 1/95)

Standard of Practice 1-7

When acting as listing brokers, Realtors® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Realtors® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. Realtors® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/93)

Standard of Practice 1-8

Realtors® acting as agents or brokers of buyers/tenants shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Realtors® acting as agents or brokers of buyers/tenants shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. (Adopted 1/93, Amended 1/99)

Standard of Practice 1-9

The obligation of Realtors® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. Realtors® shall not knowingly, during or following the termination of professional relationships with their clients:

1) reveal confidential information of clients; or

2) use confidential information of clients to the disadvantage of clients; or

3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:

a) clients consent after full

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disclosure; or

b) Realtors® are required by court order; or

c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or

d) it is necessary to defend a Realtor® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.
(Adopted 1/93, Amended 1/99)

Standard of Practice 1-10

Realtors® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. (Adopted 1/95, Amended 1/00)

Standard of Practice 1-11

Realtors® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. (Adopted 1/95)

Standard of Practice 1-12

When entering into listing contracts, Realtors® must advise sellers/landlords of:

- 1) the REALTOR®'s general company policies regarding cooperation with and compensation to subagents, buyer/tenant agents and/or brokers acting in legally recognized non-agency capacities;
- 2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
- 3) any potential for listing brokers to act as disclosed dual agents, e.g. buyer/tenant agents. (Adopted 1/93, Renumbered 1/98, Amended 1/99)

Standard of Practice 1-13

When entering into buyer/tenant agreements, Realtors®

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must advise potential clients of:

1) the REALTOR®'s general company policies regarding cooperation and compensation; and

2) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g. listing broker, subagent, landlord's agent, etc. (Adopted 1/93, Renumbered 1/98, Amended 1/99)

Article 2

Realtors® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. Realtors® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. (Amended 1/00)

Standard of Practice 2-1

Realtors® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the Realtor® the obligation of expertise in other professional or technical disciplines. (Amended 1/96)

Standard of Practice 2-2

(Renumbered as Standard of Practice 1-12 1/98)

Standard of Practice 2-3

(Renumbered as Standard of Practice 1-13 1/98)

Standard of Practice 2-4

Realtors® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

Standard of Practice 2-5

Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. (Adopted 1/93)

Article 3

Realtors® shall cooperate with other brokers except when