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DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

2005 FEB -7 A 9 59

HEARINGS OFFICE

Attorney for Department of Commerce
 and Consumer Affairs

REAL ESTATE COMMISSION
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 STATE OF HAWAII

DEPT. OF COMMERCE
 & CONSUMER AFFAIRS
 STATE OF HAWAII

2005 FEB -9 A 9 49

RECEIVED
 PROF. & VOCATIONAL
 LICENSING DIVISION

In the Matter of the)
 Real Estate Broker's)
 License of)
)
 MARLENE IWALANI LINDSEY)
)
)
 Respondent.)
)
)
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)
)

REC 2003-211-L
 SETTLEMENT AGREEMENT PRIOR
 TO FILING OF PETITION FOR
 DISCIPLINARY ACTION AND
 COMMISSION'S FINAL ORDER

DEPT. OF COMMERCE
 & CONSUMER AFFAIRS
 STATE OF HAWAII
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2005 FEB 28 P 3: 09

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
 FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER

Petitioner, the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'
 REGULATED INDUSTRIES COMPLAINTS OFFICE (hereafter "RICO" or
 "Petitioner"), through the undersigned attorney, and Respondent
 MARLENE IWALANI LINDSEY (hereafter "Respondent"), enter into this
 Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS.

1. Respondent is licensed by the REAL ESTATE COMMISSION
 (hereafter "Commission") as a real estate broker under License
 Number RB 14105. The license was issued on or about June 27,
 1986 and has an expiration date of December 31, 2004.

2. Respondent's last known business address is Marlene's Realty, Inc., 1778 Ala Moana Boulevard, Suite 2306, Honolulu, Hawaii 96815.

3. Sometime in 2003, RICO received information that the Respondent may have violated Hawaii's licensing laws or rules affecting real estate brokers.

4. RICO investigated the information, and, based on its investigation RICO alleges that via the October 17, 2002 Judgment In A Criminal Case in United States of America v. Marlene Iwalani Lindsey, U.S. District Court, District of Nevada, Case No. CR. S. 01-0318, (hereafter "Judgment"), Respondent was adjudicated guilty of violating 26 United States Code § 7206(1) by filing a false tax return. Respondent was also sentenced to six months of incarceration.

The Judgment noticed that Respondent had pled guilty to "Count 1 of the Information." The Information reads:

The United States Attorney charges:

That on or about July 7, 1997, the defendant, MARLENE IWALANI LINDSEY, a resident of Hauula, Hawaii, did willfully make and subscribe a Form 1040, U.S. Individual Income Tax Return, for the calendar year 1995, which was verified by a written declaration, that it was made under the penalties of perjury and was filed with the Internal Revenue Service, which said Form 1040, U.S. Individual Income Tax Return, for the calendar year 1995, she did not believe to be true and correct as to every material matter in that the said Form 1040, U.S. Individual Income Tax Return, for the calendar year 1995, reported adjusted gross income at line 31 of the return of the amount of \$38,255.00, whereas, as the defendant then and there well knew and believed, her true and correct adjusted gross income for the calendar year 1995 was \$175,763.00.

In violation of Title 26, United States Code, Section 7206(1).

See Information dated 2/13/02, filed 2/25/02, in United States of America v. Marlene Iwalani Lindsey, U.S. District Court, District of Nevada, Case No. CR. S. 01-0318. Based on its investigation, therefore, RICO alleges that Respondent was adjudicated guilty of a crime involving dishonesty by knowingly and willfully underreporting her income substantially, and, by making an affirmative, false representation.

5. RICO asserts that the foregoing allegations, if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate salespersons in Hawaii:

- HRS § 467-14(8) (conduct constituting fraudulent or dishonest dealings);
- HRS § 467-14(13) (violating the chapter);
- HRS § 467-14(20) (failure to maintain a reputation for honesty and truthfulness);
- HRS § 436B-19(2) (making untruthful statements);
- HRS § 436B-19(8) (failure to maintain a record of honesty and truthfulness);
- HRS § 436B-19(12) (failure to comply with a law so as to be deemed unfit or improper to hold a license);
- HRS § 436B-19(14) (criminal conviction of a penal crime directly related to the qualifications, functions or duties of the licensed profession or vocation - in Respondent's case the function or duty of reviewing and attesting to the accuracy of the contents of numerous documents used in the real estate practice); and
- HRS § 436B-19(17) (violating applicable licensing laws or regulations).

RICO further asserts that the primary state law governing the conduct of licensed real estate brokers and salespersons in

Hawaii authorize the licensing authority to discipline licensees for selfish or personal conduct. "Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or salesperson, or on the licensee's own behalf," HRS § 467-14.

6. The Commission has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT.

1. Respondent is aware that she has the right to be represented by an attorney of her choice in this matter, and, Respondent freely, knowingly and voluntarily waives the right.

2. Respondent enters into this Settlement Agreement freely, knowingly and voluntarily, and, without coercion or duress.

3. Respondent is aware of her right to contest this matter and to have a hearing to determine the issues in the case. Pursuant to HRS §91-9(d), Respondent freely, knowingly and voluntarily waives her right to contest this matter via the administrative hearing, and, Respondent agrees to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent, being at all times relevant herein licensed as a real estate broker in Hawaii, acknowledges that if the matters alleged by RICO in this case are proven at a hearing, she is subject to penalties including but not limited to, revocation, suspension or limitation of her license and civil fines.

5. Respondent acknowledges that RICO has sufficient cause

to file a Petition for Disciplinary Action against her real estate broker's license.

6. Respondent enters into this Settlement Agreement as a voluntary compromise of this matter and in order to conserve on the expenses of proceeding with an administrative hearing.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in Case No. REC 2003-211-L.

C. TERMS OF SETTLEMENT.

1. Administrative fine. Respondent shall pay an administrative fine of THREE THOUSAND DOLLARS (\$3,000.00). The fine shall be paid in full within thirty (30) days of the Commission's approval of this Settlement Agreement.

The fine shall be paid by CASHIER'S CHECK or MONEY ORDER made payable to "DCCA Compliance Resolution Fund" and shall be mailed or delivered to the Regulated Industries Complaints Office, ATTN: Esther L. Ervin, Esq., 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813.

Payment of the fine shall be considered timely only if it is received by RICO on or before the due date, or, if mailed it is post-marked on or before the due date.

2. Automatic One-Year Suspension of License Upon Failing to Comply with the Settlement Agreement. If Respondent fails to fully and timely pay the administrative fine set forth in paragraph C(1) or fails to comply with any other term of this Settlement Agreement, Respondent's license shall be suspended, without further hearing, for a period of one (1) year upon the filing of an affidavit by RICO, with the Commission, attesting to

Respondent's failure to comply. In case of such a suspension the Respondent shall turn in all indicia of her licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice of the suspension. Upon completion of the suspension period, Respondent understands that she will need to apply to the Commission for reinstatement pursuant and subject to the requirements and conditions set forth in HRS § 436B-20.

3. Settlement Agreement Not Final or Binding Until it is Approved by the Commission. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C(4), C(5), C(6) and C(7) below, this Settlement Agreement shall not be final or binding on the parties unless and until it is approved by the Commission.

4. No Objection to Adjudicating this Matter Before the Commission if the Commission Does Not Approve the Settlement Agreement. If the Commission does not approve this Settlement Agreement or does not issue an order pursuant thereto but instead an administrative hearing is conducted against Respondent in the Commission's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither she, her representative or any attorney that she may retain, will object in any administrative proceeding or in any judicial action, to the Commission's proceeding against Respondent on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

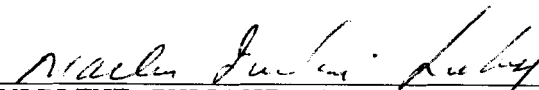
5. Ambiguities Construed to Protect the Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the public.

6. No Reliance on RICO Representations. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

7. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Honolulu, Hawaii, 1-13-05.


MARLENE IWALANI LINDSEY
Respondent

DATED: Honolulu, Hawaii January 20, 2005.

Esther L. Ervin

ESTHER L. ERVIN
Attorney for Department of
Commerce and Consumer Affairs

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)


On this 13th day of January, 2005, before me personally appeared **MARLENE IWALANI LINDSEY**, to me known to be the person described, and who executed the foregoing instrument, and acknowledged that ^{she} ~~he~~ executed the same as ^{her} ~~his~~ free act and deed.

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ELKA LIEBING Elka Liebong
Notary Public, State of Hawaii
My commission expires: **4-11-2008**

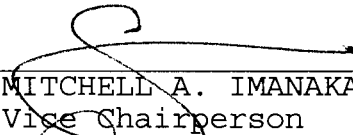
IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSE OF MARLENE
IWALANI LINDSEY; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION
FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2003-
211-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII



JOHN OHAMA -
Chairperson

February 25, 2005
DATE



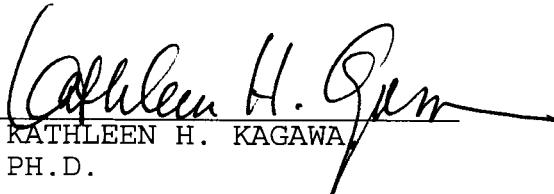
MITCHELL A. IMANAKA -
Vice Chairperson




LOUIS E. ABRAMS



CAROL MAE A. BALL



KATHLEEN H. KAGAWA
PH.D.



MICHELE SUNAHARA
LOUDERMILK



TRUDY N. NISHIHARA



IRIS R. OKAWA

VERN M. YAMANAKA