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Regulated Industries Complaints Office
Department of Commerce and
Consumer Affairs
State of Hawaii
235 S. Beretania Street, 9th Floor
Honolulu, Hawaii 96813
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2006 MAY 25 P 2: 09
DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

DEPT. OF COMMERCE
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HEARINGS OFFICE
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DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

Attorney for Department of Commerce
and Consumer Affairs

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

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS
HEARINGS OFFICE
2006 JUL 28 P 3: 32

In the Matter of the) REC 2003-232-L
Real Estate Broker's License of)
)
DARYL R. GERLOFF,) SETTLEMENT AGREEMENT PRIOR TO
doing business as GERLOFF REALTY,) FILING OF PETITION FOR
) DISCIPLINARY ACTION AND
) COMMISSION'S FINAL ORDER;
Respondent.) EXHIBIT "1"
)

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

Respondent DARYL R. GERLOFF, doing business as GERLOFF REALTY

("Respondent"), and the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("RICO"), through its undersigned attorney, 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 (the "Commission") as a Real Estate Broker under License Number RB 16999. Said license was issued on May 23, 1997, and currently has an expiration date of December 31, 2006.

2. The last known address for Respondent is 95-273 Waikalani Drive, Suite. D906, Mililani, Hawaii 96789.

3. RICO received a complaint against Respondent from Sharon L. Di Antonio, alleging that Respondent failed to honor the Rental Management Agreement for her property located at 84-871 Hanalei Street, #B, Waianae, Hawaii 96792 (“the Property”).

4. Ms. Di Antonio alleges that the Rental Management Agreement states that pets are not allowed at the Property, but, without her approval, around September 5, 2002, Respondent signed a “Pet Addendum to Rental Agreement” which allowed tenants at the Property to have seven terriers.

5. Ms. Di Antonio also alleges that the tenants failed to pay their rent. However, the Rental Agreement clearly holds harmless Respondent for any error of judgment except in cases of willful misconduct, Ms. Di Antonio did not terminate her Rental Management Agreement with Respondent until February 10, 2003, and Respondent pursued a summary possession action against the tenants on behalf of Ms. Di Antonio which resulted in a judgment of \$8,750.00.

6. The foregoing allegations, if proven, would constitute violations of the following statutes governing the conduct of real estate brokers licensed in the State of Hawaii: Hawaii Revised Statutes (“HRS”) § 467-14(13) (violating rules promulgated under HRS chapter 467) and Hawaii Administrative Rules (“HAR”) § 16-99-3(u) (licensee shall not add to or modify the terms of an instrument without written consent of all the parties).

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

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B. REPRESENTATIONS BY RESPONDENT:

1. Respondent is represented by an attorney in this matter, Vernon T. Tashima, Esq., whose address is Central Pacific Plaza, Suite 888, 220 South King Street, Honolulu, Hawaii 96813.

2. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress.

3. Respondent has been informed of his right to have a hearing to determine the issues in RICO's investigation. Pursuant to HRS § 91-9(d), Respondent voluntarily waives his right to a hearing and agrees to a disposition 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 by the Commission acknowledges that he is subject to penalties including but not limited to, revocation, suspension or limitation of his license and civil fines, if the foregoing violations are proven at hearing.

5. Respondent does not admit to the veracity of the allegations and that his acts constitute violations of the following statutes and/or regulations governing the conduct of real estate brokers licensed in the State of Hawaii: HRS § 467-14(13) and HAR § 16-99-3(u).

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

7. Respondent agrees that this Settlement agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2003-232-L.

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C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of ONE THOUSAND AND NO/100 U.S. DOLLARS (\$1,000.00), the payment of which shall be due within thirty (30) days of the Commission's approval of this Settlement Agreement. Said payment shall be made by **cashier's check or money order made payable to "State of Hawaii - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Wendy J. Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30th day to be in compliance with this Settlement Agreement.

2. Restitution. Respondent agrees to pay restitution in the amount of SIX HUNDRED THIRTY-FIVE AND 07/100 U.S. DOLLARS (\$635.07) to Sharon L. Di Antonio, the payment of which shall be due within thirty (30) days of the Commission's approval of this Settlement Agreement. Said payment shall be made by **cashier's check or money order made payable to "Sharon L. Di Antonio"** and mailed to the Regulated Industries Complaints Office, Attn: Wendy J. Utsumi, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30th day to be in compliance with this Settlement Agreement. Ms. Sharon Di Antonio's acceptance of this payment shall constitute a complete settlement of any and all claims, charges and allegations made or filed against Respondent; and, Ms. Di Antonio shall execute a Release and Indemnification Agreement in favor of Respondent in the form attached hereto as Exhibit "1".

3. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely pay the administrative fine or restitution as set forth in paragraphs C.1 and C.2 above, Respondent's license shall be automatically revoked for a period of five (5) years upon RICO's

filing of an affidavit with the Commission attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of his licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice of the revocation. Upon completion of the revocation period, Respondent understands that he will need to apply to the Commission for reinstatement pursuant and subject to the requirements and conditions set forth in HRS §§ 92-17(c)(2) and 436B-21, and HAR § 16-99-10.

4. Possible further sanction. The Commission, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Commission may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of real estate brokers in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

5. Approval of the Commission. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.6, C.7, C.8 and C.9 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Commission.

6. No Objection if Commission Fails to Approve. If the Commission does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, 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 he nor any attorney that he may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Commission's proceeding against him on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

7. Any Ambiguities Shall be Construed to Protect the Consuming 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 consuming public.

8. No Reliance on Representations by RICO. 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.

9. 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.

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

DATED: Mililani, Hawaii, APRIL 21ST, 2006.

/s/ DARYL R. GERLOFF

DARYL R. GERLOFF,
doing business as Gerloff Realty
Respondent

DATED: Honolulu, Hawaii, _____.

/s/ WENDY J. UTSUMI

WENDY J. UTSUMI
Attorney for Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM & CONTENT:

/s/ VERNON T. TASHIMA

VERNON T. TASHIMA
Attorney for Respondent

IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSE OF DARYL R. GERLOFF,
DOING BUSINESS AS GERLOFF REALTY; SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL
ORDER; RICO CASE NO. REC 2003-232-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII

/s/ TRUDY I. NISHIHARA

~~TRUDY I. NISHIHARA~~
Chairperson

[July 28, 2006]

~~DATE~~

/s/ STANLEY M. KURIYAMA

~~IRIS R. OKAWA~~ Stanley M. Kuriyama
Vice-Chairperson

/s/ LOUIS E. ABRAMS

~~LOUIS E. ABRAMS~~

/s/ CAROL MAE A. BALL

~~CAROL MAE A. BALL~~

/s/ FRANCES GENDRANO

~~KATHLEEN H. KAGAWA,~~
Ph.D.
Frances Gendrano

/s/ MARK SUIO

~~STANLEY M. KURIYAMA~~
Mark Suio

/s/ MICHELE SUNAHARA LOUDERMILK

~~MICHELE SUNAHARA~~
LOUDERMILK

~~VERN M. YAMANAKA~~
Annette Aiona

PVL 02/08/06

~~William Once~~

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 21st day of April, 2006, before me personally appeared
DARYL R. GERLOFF, doing business as GERLOFF REALTY, 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

[Signature redacted]

Name: VERNON T. TASHIMA L.S.
Notary Public – State of Hawaii

My commission expires: 9/26/2009

RELEASE AND INDEMNIFICATION

KNOW ALL MEN BY THESE PRESENTS:

THAT SHARON L. Di ANTONIO, hereinafter called the "Releasor", for herself, her respective heirs and personal representatives, in consideration of the sum of SIX HUNDRED THIRTY FIVE AND 07/100 DOLLARS (\$635.07) paid by DARYL R. GERLOFF, dba GERLOFF REALTY, the receipt of which is hereby acknowledged, does hereby release and forever discharge indemnify, defend and hold harmless, DARYL R. GERLOFF, his heirs and personal representatives from any and all claims, demands, actions or causes of action whatsoever which the undersigned now has, or may have, whether now known or whether anticipated or not, resulting from, arising out of, or connected with, directly or indirectly with the Rental Management Agreement, dated August 8, 2002 made with DARYL R. GERLOFF, and with any action undertaken by said DARYL R. GERLOFF thereunder.

IT IS UNDERSTOOD AND AGREED that said payment is in complete satisfaction of any and all claims, demands, allegations, actions or causes of action, as aforesaid, relating to the foregoing matter without limitation, and is not an admission of liability or fault of any kind whatsoever, but compromises and settles all disputes between the parties for the purpose of avoiding, or continuing, litigation and expense, and that the consideration received is the final consideration for this Release and not other payment or consideration has been promised, or will be paid, to Releasor by, or on behalf of, DARYL R. GERLOFF.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand on this _____ day of _____, 2006.

SHARON L. Di ANTONIO

"RELEASOR"

EXHIBIT "1"

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

On this _____ day of _____, 2006, before me personally appeared SHARON L. Di ANTONIO, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

Notary Public, State of Hawaii
Print Notary's Name:
My commission expires: