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Department of Commerce and  
Consumer Affairs  
State of Hawaii  
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235 South Beretania Street, Suite 900  
Honolulu, Hawaii 96813  
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Attorney for Department of Commerce  
and Consumer Affairs

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2005 MAY 24 P 2: 25

HEARINGS OFFICE

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& CONSUMER AFFAIRS  
STATE OF HAWAII

2005 APR 22 A 10: 22

RECEIVED  
PROF & VOCATIONAL  
LICENSING DIVISION

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

In the Matter of the Real Estate Broker's License of  
JAMES A. COLE,  
Respondent.  
) REC 2003-298-L  
)  
) SETTLEMENT AGREEMENT PRIOR  
) TO FILING OF PETITION FOR  
) DISCIPLINARY ACTION AND  
) COMMISSION'S FINAL ORDER  
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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"), through the undersigned attorney, and Respondent JAMES A. COLE (hereafter "Respondent"), through himself, 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 the "Commission") as a real estate broker under License Number RB 8406. The license was issued on or about January 2, 1975 and will expire on December 31, 2006.

2. Respondent's last known place of business is Century 21 All Islands, 133 Makawao Avenue, Makawao, Hawaii 96768.

3. Sometime in 2003, RICO received a complaint that Respondent may have violated Hawaii's licensing laws or rules related to advertising by real estate brokers and salespersons.

4. RICO investigated the complaint, and, based on its investigation RICO alleges that on or about August 15, 2003, an advertisement placed by the Respondent, for the sale of real property, appeared in the classified section of The Maui News. It read:

DEVELOPER wants to sell  
40,000 sf of his R-3 zoned  
Makawao property w/2 water  
meters. Asking \$400,000  
Call James A. Cole (R)  
281-6465  
Century 21 All Islands

RICO further alleges that the Respondent placed the ad on behalf of his then client, the so-called "DEVELOPER" in the ad. The property, however, had not yet been transferred to the Respondent's client when the ad appeared in The Maui News even though the ad says that it is his. In fact, the property was in escrow at the time, Respondent's client was merely the purchaser under the DROA, and the property was still owned by the Seller. In the end the property was never transferred to the Respondent's client.

5. 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 brokers in Hawaii:

- Hawaii Administrative Rule (hereafter "HAR") § 16-99-3(1) (licensees shall not place any advertisement indicating that property is for sale without the written authorization of the owner or seller and approval of the principal broker or broker in charge);

- HAR § 16-99-3(w) (violating the chapter and/or rules and regulations relating to real estate licensees);
- Hawaii Revised Statutes (hereafter “HRS”) § 436B-19(2) (untruthful statements and false or deceptive advertising);
- HRS § 436B-19(9) (conduct with violates recognized standard of ethics for the profession) (see National Association of Realtor’s Code of Ethics, Standard of Practice 12-4 forbidding realtors from advertising property without authority);
- HRS § 436B-19(17) (violating the chapter and/or rules and regulations relating to real estate licensees);
- HRS § 467-14(2) (making false promises regarding a real estate transaction that is likely to mislead);
- HRS § 467-14(3) (making false promises through advertising);
- HRS § 467-14(8) (conduct constituting dishonest dealings); and
- HRS § 467-14(13) (violating the chapter and applicable licensing laws or regulations).

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

**B. REPRESENTATIONS BY RESPONDENT.**

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

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

3. Respondent is aware of his 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 his 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, he is subject to penalties including but not limited to, revocation, suspension or limitation of his license and civil fines.

5. Respondent acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against his 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 2003-298-L.

C. TERMS OF SETTLEMENT.

1. Administrative fine. Respondent shall pay an administrative fine of ONE THOUSAND DOLLARS (\$1,000.00).

The fine shall be paid in full within THIRTY (30) days of approval of this Settlement Agreement by the Commission, or, the fine shall be paid in two equal installments, as follows:

- a) \$ 500.00 within 30 days of approval of the Settlement Agreement; and
- b) \$ 500.00 within 30 days after the due date for the first installment.

All payments, whether paid in full or via installments, shall be 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. All payments, whether in full or by installments, will be considered timely only if they are received by RICO on or before the due

date, or, if mailed they are post-marked on or before the due date.

2. Automatic Suspension of License Without Further Hearing Upon Respondent's Failure to Comply with the Settlement Agreement. If Respondent fails to timely pay the administrative fine in accordance with paragraph C(1), Respondent's license shall be suspended automatically and without further hearing, for a period of six (6) months, upon the filing of an affidavit by RICO, with the Commission, attesting to Respondent's failure to comply. In case of such an automatic suspension the 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 suspension. Upon completion of the suspension 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 § 436B-20.

3. Entire Settlement Agreement Not Final or Binding Until it is Approved by the Commission. The parties agree that, except for the representations, agreements and covenants contained in Paragraphs C(4), C(5) and C(6) the entire Settlement Agreement shall not be final or binding on the parties unless and until it is approved by the Commission. This means that if the Commission rejects this Settlement Agreement, then by their signatures, the Respondent and RICO are still bound by Paragraphs C(4), C(5) and C(6) herein.

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 hereto, but instead an administrative hearing regarding this case is held against Respondent in the Commission's usual and customary fashion pursuant to the Hawaii Administrative Procedure Act, then Respondent agrees that he, his representative or any attorney that he may retain shall be forever precluded from objecting to

or challenging, in an administrative proceeding or in any related judicial action, to the Commission's proceeding against Respondent on the basis that the Commission became disqualified from considering the case because of its review and consideration of this Settlement Agreement.

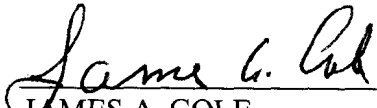
5. Ambiguities Construed to Protect the Public. Any ambiguity in this Settlement Agreement shall be read and interpreted in the manner that most completely protects the interests of the public.

6. No Reliance on RICO Representations. Other than the matters stated specifically 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, APR 19 2005

  
\_\_\_\_\_  
JAMES A. COLE  
Century 21 All Islands

DATED: Honolulu, Hawaii

4/19/05

*Esther L. Ervin*

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

STATE OF HAWAII )

SS.

CITY AND COUNTY Mauai )

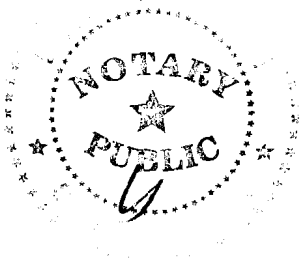
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On this 12<sup>th</sup> day of April 2005, before me personally appeared **JAMES A. COLE** to me known to be the person described, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

*Dunndalacqua/Brenda Callen*

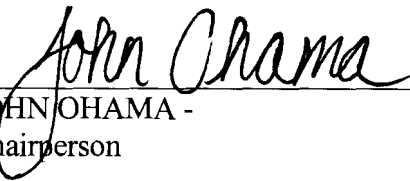
Notary Public, State of Hawaii

My commission expires: 8/1/05



IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSE OF JAMES A. COLE;  
SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY  
ACTION AND COMMISSION'S FINAL ORDER; REC 2003-298-L

APPROVED AND SO ORDERED:  
REAL ESTATE COMMISSION  
STATE OF HAWAII

  
\_\_\_\_\_  
JOHN OHAMA -  
Chairperson

May 24, 2005  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
MITCHELL A. IMANAKA -  
Vice Chairperson


  
\_\_\_\_\_  
LOUIS E. ABRAMS

\_\_\_\_\_  
CAROL MAE A. BALL

\_\_\_\_\_  
KATHLEEN H. KAGAWA,  
PH.D.

  
\_\_\_\_\_  
MICHELE SUNAHARA  
LOUDERMILK

  
\_\_\_\_\_  
TRUDY A. NISHIHARA

  
\_\_\_\_\_  
IRIS R. OKAWA

\_\_\_\_\_  
VERN M. YAMANAKA