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Regulated Industries Complaints Office
Department of Commerce and
Consumer Affairs
State of Hawaii
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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

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AND CONSUMER AFFAIRS

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HEARINGS OFFICE

Attorney for Department of Commerce
and Consumer Affairs

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

In the Matter of the) REC 2003-3-L
Real Estate Brokers Licenses of)
)
PROPERTY NETWORK, LTD., and) FIRST AMENDED SETTLEMENT
) AGREEMENT PRIOR TO FILING OF
ROBERT M. SMITH) PETITION FOR DISCIPLINARY ACTION
) AND COMMISSION'S FINAL ORDER
Respondents.)
)
)

HEARINGS OFFICE
2006 MAY 26
DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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

Respondents Property Network, Ltd. ("Property Network") and Robert M. Smith ("Smith") (collectively, "Respondents"), 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 Property Network is licensed by the Real Estate Commission (the "Commission") as a real estate broker under License Number RB 15871. Said license was issued on July 31, 1991 and currently has an expiration date of December 31, 2006.

2. Respondent Smith is licensed by the Commission as a real estate broker under License Number RB 15065. Said license was issued on September 22, 1989 and currently has an expiration date of December 31, 2006.

3. Respondent Smith has been the principal broker for Respondent Property Network since July 31, 1991.

4. The last known business address for Respondents is Alii Sunset Plaza, 75-5799 Alii Drive, B-3, Kailua-Kona, Hawaii 96740. The last known mailing address for Respondents is P.O. Box 1296, Kailua-Kona, Hawaii 96745.

5. RICO received a complaint against Respondents from Robert G. Brost, alleging that Respondents failed to timely inform Mr. Brost that the condo unit Respondents agreed to rent to him was no longer available because the owner of the condo unit canceled the property management agreement with Respondents, and, although Respondents refunded to Mr. Brost all the money he paid to rent the condo unit, Mr. Brost suffered additional damages by having to pay more for a replacement rental property. Mr. Brost additionally alleged that Respondents continued to advertise in a flyer the availability of the condo unit several months after Respondents' property management agreement had been terminated.

6. RICO alleges that Respondents failed to timely notify the Commission in writing or otherwise disclose to the Commission of the June 10, 2002 judgment awarded to Mr. Brost for the additional costs he incurred by having to rent a replacement property.

7. 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") §§ 436B-16(a) (judgments must be reported in writing within 30

days), 467-14(3) (pursuing a continued course and flagrant course of misrepresentation or making a false promise through advertising), 467-14(8) (any other conduct constituting fraudulent or dishonest dealings).

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

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondents are fully aware that they have the right to be represented by an attorney of their choosing in this matter and voluntarily waives that right.

2. Respondents enter into this Settlement Agreement freely and voluntarily and under no coercion or duress.

3. Respondents have been informed of their right to have a hearing to determine the issues in RICO's investigation. Pursuant to HRS §91-9(d), Respondents voluntarily waive their right to a hearing and agree to a disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed as real estate brokers by the Commission acknowledge that they are subject to penalties including but not limited to, revocation, suspension or limitation of their license and civil fines, if the foregoing violations are proven at hearing.

5. Respondents do not admit that they violated any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against their real estate brokers licenses.

6. Respondents enter 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. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2003-3-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents, jointly and severally, agree to pay a fine in the amount of ONE THOUSAND FIVE HUNDRED AND NO/100 U.S. DOLLARS (\$1,500.00), 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. Respondents, jointly and severally, agree to pay restitution in the amount of ONE THOUSAND SIX HUNDRED TWENTY-FIVE AND 68/100 U.S. DOLLARS (\$1,625.68) to Robert G. Brost. Respondents have already made said payment and Mr. Brost's June 10, 2002 judgment against Respondents has been satisfied in full.

3. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely pay the administrative fine and restitution as set forth in paragraphs C.1 and C.2 above, Respondents' licenses 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, Respondents shall turn in all indicia of their 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, Respondents understand that they will need to apply to the Commission

for a new license pursuant and subject to the requirements and conditions set forth in HRS § 92-17, 436B-21, and 467-15.5 and Hawaii Administrative Rules § 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 Respondents violate any provision of the statutes or rules governing the conduct of real estate brokers in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

5. Approval of the Commission. Respondents agree 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 Respondents in the Commission's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither they nor any attorney that they may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Commission's proceeding against them 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 Respondents to induce entry into this Settlement Agreement, and Respondents are 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: Kailua-Kona, Hawaii, [April 26, 2006]

/s/ ROBERT M. SMITH

ROBERT M. SMITH
Respondent

DATED: Kailua-Kona, Hawaii, [April 26, 2006]

PROPERTY NETWORK, LTD.

By: /s/ ROBERT M. SMITH

Robert M. Smith
Its President and Principal Broker

DATED: Honolulu, Hawaii, [May 1, 2006]

/s/ WENDY J. UTSUMI

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

IN THE MATTER OF THE REAL ESTATE BROKERS LICENSES OF PROPERTY NETWORK, LTD., AND ROBERT M. SMITH; FIRST AMENDED SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2003-3-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII

[May 26, 2006]

TRUDY I. NISHIHARA
Chairperson

DATE

/s/ IRIS R. OKAWA

IRIS R. OKAWA
Vice-Chairperson

/s/ LOUIS E. ABRAMS

LOUIS E. ABRAMS

/s/ CAROL MAE A. BALL

CAROL MAE A. BALL

KATHLEEN H. KAGAWA,
Ph.D.

/s/ STANLEY M. KURIYAMA

STANLEY M. KURIYAMA

/s/ MICHELE SUNAHARA LOUDERMILK

MICHELE SUNAHARA
LOUDERMILK

VERN M. YAMANAKA

PVL 02/08/06

STATE OF HAWAII)
)
~~CITY~~ & COUNTY OF Hawaii) SS.

On this 26th day of April, 2006, before me personally appeared ROBERT M. SMITH, to me known to be the person described in, and who executed the foregoing instrument, on his own behalf and on behalf of PROPERTY NETWORK, LTD., as president and principal broker and acknowledged that he executed the same as his free act and deed.

[Signature redacted]

Name: Barbara A. Lacy
Notary Public, State of Hawaii

L.S

My Commission expires: 3/16/2007

STATE OF HAWAII)
)
~~CITY~~ & COUNTY OF HAWAII) SS.

On this 26th day of April, 2006, before me personally appeared ROBERT M. SMITH, 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: Barbara A. Lacy
Notary Public, State of Hawaii

L.S

My Commission expires: 3/16/2007