

WENDY J. UTSUMI 6340
 Regulated Industries Complaints Office
 Department of Commerce and Consumer Affairs
 State of Hawaii
 235 S. Beretania Street, 9th Floor
 Honolulu, Hawaii 96813
 Telephone: 586-2660

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

2005 MAR -3 A 10: 34

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 MAR 18 P 1: 45

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 LICENSING DIVISION

In the Matter of the) REC 2004-10-L; 2004-23-L; 2004-28-L
 Real Estate Broker's and Salesperson's)
 Licenses of)
) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR
 FRANK SIMUTIS REALTY, INC.,) DISCIPLINARY ACTION AND
 FRANK W. SIMUTIS, and) COMMISSION'S FINAL ORDER
 HELEN U. SIMUTIS,)
)
 Respondents.)
)

2005 APR 29 P 3: 40

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

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

Respondents Frank Simutis Realty, Inc. ("FSR"), Frank W. Simutis ("Respondent Frank"), and Helen U. Simutis ("Respondent Helen") (collectively, hereinafter "Respondents"), and the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office (hereinafter "RICO"), through its undersigned attorney, enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS

1. Respondent FSR is licensed by the Real Estate Commission ("Commission") as a real estate broker, License No. RB 16386, and does business as S & L Rentals.

2. Respondent Frank is licensed by the Commission as a real estate broker, License No. RB 9946.

3. Respondent Helen is licensed by the Commission as a real estate salesperson, License No. RS 47821.

4. The business mailing address for Respondents is 95-510 Wikao Street, #B-202, Mililani, Hawaii 96789.

5. Respondents are represented by Lloyd Y. Asato, Esq., whose business address is Pacific Tower, Suite 1030, 1001 Bishop Street, Honolulu, Hawaii 96813 (Tel: 808-524-4249).

6. On or about December 3, 2003, RICO received a complaint against Respondents from Kwi Nyo White, alleging that Respondent failed to refund to her the initial \$500.00 security deposit and an additional \$500.00 that Ms. White paid to the new owner of the building in which she rented an apartment through FSR.

7. On or about December 23, 2003, RICO received a complaint against Respondents from Thomas Michael Rogers, alleging the he hired FSR to manage his property, but Respondents failed to forward to him rental monies from May to November 2003, which totaled \$5,670.00.

8. On or about December 18, 2003, RICO received a complaint against Respondents from John and Anne Washburn (the "Washburns"), alleging that they hired Respondents to manage their property, but, in November 2003, cancelled the agreement due to Respondent Helen's recent illness. The Washburns allege that Respondents failed to forward the \$1,200.00 security deposit, the \$1,080.00 rental monies for October 2003 (\$1,200.00 less the 10% rental management fee), and the extra keys for their property.

9. RICO alleges that Respondents used the trade name “S & L Realty” but did not register the trade name with the Commission.

10. The foregoing allegations, if proven, would constitute violations of the following statutes governing the conduct of real estate brokers and real estate salespersons licensed in the State of Hawaii: Hawaii Revised Statutes (“HRS”) §§ 467-1.6(b)(3) (principal broker responsible for all contracts and associated salespersons), 467-14(7) (failing to account for money of others), 467-14(13) (violating HRS chapter 467 and applicable rules) and Hawaii Administrative Rules (“HAR”) § 16-99-19.1(2)(b)(2) (trade name not approved by the Commission).

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

B. REPRESENTATIONS BY RESPONDENT:

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

2. 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 agrees to a disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

3. Respondents being at all times relevant herein licensed as real estate brokers and real estate salesperson by the Commission acknowledges 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.

4. Respondents admit to the veracity of the allegations and that their acts constitute violations of the following statutes and/or regulations governing the conduct of real estate brokers and salespersons licensed in the State of Hawaii: (“HRS”) §§ 467-1.6(b)(3) (principal broker responsible for all contracts and associated salespersons), 467-14(7) (failing to account for money of others), 467-14(13) (violating HRS chapter 467 and applicable rules) and Hawaii Administrative Rules (“HAR”) § 16-99-19.1(2)(b)(2) (trade name not approved by the Commission).

5. 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.

6. Respondents agree that this Settlement agreement is intended to resolve the issues raised in RICO’s investigation in RICO Case Nos. REC 2004-10-L, 2004-23-L, and 2004-28-L.

C. TERMS OF SETTLEMENT:

1. Voluntary Surrender and Agreement not to Apply for a Future License.

Respondents agree to the immediate and voluntary surrender of their real estate broker and real estate salesperson licenses, and, Respondents agree that they will not apply or re-apply for a real estate broker or real estate salesperson’s license with the State of Hawaii at anytime in the future. If Respondents do apply for such licenses, the State of Hawaii will deny the license pursuant to this Settlement Agreement.

Respondents’ immediate and voluntary surrender of their licenses shall become effective upon the approval of this Settlement Agreement by the Board. Respondents shall turn in all indicia of their licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice that this Settlement Agreement has been approved by the Commission.

2. 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 and salespersons in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

3. Approval of the Commission. Respondents agree 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 binding on any of the parties unless and until it is approved by the Commission.

4. 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 Respondents on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

5. 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.

6. 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.

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.

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

DATED: Mililani, Hawaii, February 28, 2005

Frank W. Simutis
FRANK W. SIMUTIS
Respondent

DATED: Mililani, Hawaii, February 28, 2005.

Helen U. Simutis
HELEN U. SIMUTIS
Respondent

DATED: Mililani, Hawaii, February 28, 2005.

FRANK SIMUTIS REALTY, INC.

By: Frank W. Simutis
Its President

DATED: Honolulu, Hawaii, February 29, 2005.

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

APPROVED AS TO FORM AND CONTENT:

Lloyd F. Asato
LLOYD F. ASATO, ESQ.
Attorney for Respondents

In the Matter of the Real Estate Broker's and Salesperson's Licenses of FRANK SIMUTIS REALTY, INC., FRANK W. SIMUTIS, and HELEN SIMUTIS; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; RICO CASE NOS. REC 2004-10-L, REC 2004-23-L, and REC 2004-28-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
State of Hawaii

JOHN OHAMA
Chairperson Broker

April 29, 2005
DATE

MITCHELL A. IMANAKA

Louis E. Abrams
LOUIS E. ABRAMS

CAROL MAE A. BALL

Kathleen H. Kagawa
KATHLEEN H. KAGAWA, PH.D.

Michele Sunahara Loudermilk
MICHELE SUNAHARA LOUDERMILK

Trudy Nishihara
TRUDY NISHIHARA

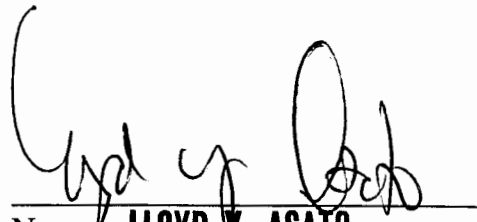
Iris R. Okawa
IRIS R. OKAWA

Vern M. Yamanaka
VERN M. YAMANAKA

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

On this 28th day of Feb., 2005, before me personally appeared FRANK
SIMUTIS ~~REALTY~~, to me known to be the person described, and who executed the foregoing
instrument, on his own behalf and on behalf of FRANK SIMUTIS REALTY INC. as president,
director, and principal broker, and acknowledged that he executed the same as his free act and
deed.

Lya
notp.

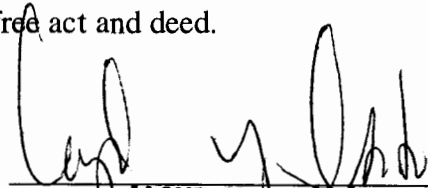


Name: **LLOYD V. ASATO**
Notary Public, State of Hawaii

My Commission expires: 6.8.05

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

On this 28th day of February, 2005, before me personally appeared
HELEN U. SIMUTIS, to me known to be the person described and who executed the foregoing
instrument and acknowledged the same as her free act and deed.



Name: LLOYD Y. ASATO
Notary Public – State of Hawaii

My commission expires: 6.8.05