

ESTHER L. ERVIN 7507-0
Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
Leiopapa A Kamehameha Building
235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
Telephone: 586-2660

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PROF & VOCATIONAL
LICENSING DIVISION

DEPT OF COMMERCE
& CONSUMER AFFAIRS

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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

Attorney for Department of Commerce
and Consumer Affairs

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

2008 JUL 28 P 3: 29
REAL ESTATE COMMISSION
DEPT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Real Estate License of) REC 2006-361-L
)
NATHALIE MULLINIX REALTY) SETTLEMENT AGREEMENT PRIOR TO
UNIVERSAL, INC., a Real Estate) FILING OF PETITION FOR DISCIPLINARY
Broker, and NATHALIE C. MULLINIX, a) ACTION AND COMMISSION'S FINAL
Real Estate Broker,) ORDER
)
Respondents.)
_____)

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 Respondents NATHALIE MULLINIX REALTY
UNIVERSAL, INC., and NATHALIE C. MULLINIX, (hereafter referred to collectively as
"Respondents"), enter into this Settlement Agreement on the terms and conditions set forth
below.

A. UNCONTESTED FACTS

1. At all relevant times herein, Respondent Nathalie Mullinix Realty Universal, Inc.,
was a real estate corporation licensed by the Real Estate Commission (hereafter "Commission")

as a real estate broker pursuant to license RB 17597. The license was issued on or about June 6, 2001. It has an expiration date of December 31, 2008.

2. At all relevant times herein, Respondent Nathalie C. Mullinix was licensed by the Commission as a real estate broker pursuant to license RB 17596. The license was issued on or about June 6, 2001. It has an expiration date of December 31, 2008. Respondent Nathalie C. Mullinix was also, at all relevant times herein, the principal broker of Respondent Nathalie Mullinix Realty Universal, Inc.

3. Respondents' mailing address that is on file with the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs is P.O. Box 1184, Kailua, Hawaii 96734.

4. Pursuant to Hawaii Revised Statutes (hereafter "HRS") Chapters 436B and 467, the Commission has jurisdiction over the subject matter, the parties and the licenses herein.

B. RICO ALLEGATIONS

1. Upon information and belief, sometime in the fall of 2006 Respondents listed a home at 7007 Hawaii Kai Dr. #F25, in the City and County of Honolulu, for sale on the Multiple Listing Service (hereafter "MLS"). The home is a 2 bedroom/2 bath unit. The Respondents listed the home on the MLS as a 3 bedroom/2 bath unit with this notation in the comments: "Loft is 3rd bdrm."

2. Upon information and belief, thereafter advertisements, which described the home as a 3 bedroom/2 bath unit, ran in the local papers. There was no comment or clarification in the ads which explained that a "loft" was the third bedroom.

3. Upon information and belief, the buyers that eventually purchased the home discovered, upon viewing the home for the first time, that it was clearly a 2 bedroom unit with a "loft area. The buyers did not object, however, because they wanted *at least* a 2 bedroom home.

4. Upon information and belief, sometime before the sale of the home closed in the winter of 2006, the home was appraised professionally as a 2 bedroom unit with a loft.

5. Upon information and belief, sometime before the sale of the home closed in the winter of 2006, but after the buyers' loan had been approved and the appraisal and inspections were completed, the Respondents amended the MLS listing to reflect that the home was a 2 bedroom unit.

6. RICO asserts that the allegations in paragraphs B(1) – (5), if proven at an administrative hearing before the Commission, could constitute violations of at least the following statutes governing the conduct of real estate licensees in Hawaii:

- HRS § 436B-19(2) (false or deceptive advertising, or, making untruthful or improbable statements);
- HRS § 436B-19(7) (professional misconduct);
- HRS § 467-14(20) (failure to maintain a reputation for or record of honesty, truthfulness, fair dealing);
- HRS § 467-14(13) (violating the chapter and rules of the Commission); and
- Hawaii Administrative Rule (hereafter "HAR") § 16-99-3(b) (licensee shall protect the public against misrepresentation in the field of real estate).

C. REPRESENTATIONS BY RESPONDENT

1. Respondents assert that the listing of the home as a 3 bedroom unit was not a deception, nor was it done with dishonest intent, because the comments in the MLS disclosed and notified buyers that the loft was considered to be the third bedroom. Respondents further assert that Respondent Nathalie C. Mullinix has had a perfect record in this industry, licensed as a sales agent in 1985 in Maryland and as a broker since 1990 in Maryland. Respondents further assert that they take the public's welfare seriously as well as every aspect of this business and

would never intentionally create any harm. Respondents further assert that there is no consumer harm in this case as the buyers were pleased with the unit and purchased it after viewing it.

2. Respondents acknowledge that they have the right to be represented by an attorney and Respondents freely, knowingly and voluntarily waive that right.

3. Respondents enter into this Settlement Agreement freely, knowingly and voluntarily, and, without coercion or duress.

4. Respondents acknowledge that they have the right to contest this matter through a hearing that adjudicates the issues in the case. Pursuant to HRS §91-9(d), Respondents freely, knowingly and voluntarily waive the right to a hearing and agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

5. Respondents do not admit to the RICO allegations set forth in paragraphs B(1) - B(6) above and Respondents deny having violated any licensing law or rule. Respondents enter into this Settlement Agreement strictly as a compromise of the claims and to conserve on the expense of proceeding with a hearing in this matter.

6. Respondents agree that this Settlement Agreement is intended to resolve RICO Case No. REC 2006-361-L.

D. TERMS OF SETTLEMENT

1. Administrative fine.

Respondents shall, jointly and severally, pay an administrative fine of THREE THOUSAND NO/100 DOLLARS (\$3,000.00).

The fine is due by no later than thirty (30) days after approval of this Settlement Agreement by the Commission.

The fine shall be paid by **cashier's check or money order made payable to "State of Hawaii - Compliance Resolution Fund"** and mailed or delivered to the Regulated Industries

Complaints Office, Attn: Esther L. Ervin, Esq., 235 S. 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 Revocation of License Without Further Hearing Upon Respondents' Failure to Comply with the Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph D(1) above, Respondents' licenses shall be automatically revoked 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 individual licenses to the Executive Officer of the Commission within ten (10) days after receipt of a notice of the revocation. In case of such revocation, Respondents understand that Respondents cannot apply for a new license until expiration of at least five (5) years after the effective date of the revocation. Respondents understand that if Respondents desire to become licensed again, Respondents must each apply to the Commission for a new license pursuant and subject to HRS §§ 92-17, 436B-21, 467-15.5, HAR § 16-99-10, and all other applicable laws and rules in effect at the time.

3. 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 licensees in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. 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 D(5), D(6) and D(7), 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 Respondents and RICO are still bound by paragraphs D(5), D(6) and D(7) herein.

5. 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, does not issue an order pursuant thereto, or does not approve a lesser remedy, and an administrative hearing is conducted against the Respondents in the Commission's usual and customary fashion pursuant to the Hawaii Administrative Procedures Act, then the Respondents, the Respondents' representative(s) or any attorney that the Respondents may retain are precluded forever from objecting to or challenging, in an administrative proceeding or in any judicial action, the Commission's handling of a proceeding against the Respondents on the basis that the Commission became disqualified from considering the case because it reviewed and considered this Settlement Agreement.

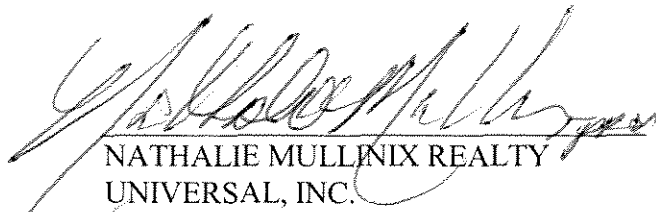
6. Ambiguities Construed to Protect the Public. Any ambiguity in this Settlement Agreement shall be read and interpreted in a manner that most completely protects the interests of the public.

7. No Reliance on Representations Other Than Those Stated Herein. Other than the matters stated specifically in this Settlement Agreement, neither RICO nor anyone acting on RICO's behalf has made any representation of fact, opinion or promise to the Respondents to induce entry into this Settlement Agreement, and the 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.

8. Complete Agreement. This Settlement Agreement is a complete and final 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 _____.

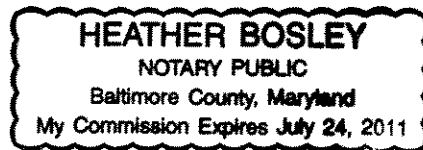

NATHALIE MULLINIX REALTY
UNIVERSAL, INC.
Respondent

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

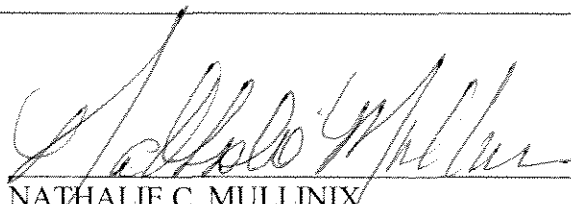
On this 26TH day of JUNE, 2008, before me personally appeared Nathalie Mullinix, to me known to be the person described, a duly authorized agent of NATHALIE MULLINIX REALTY UNIVERSAL, INC., who executed the foregoing instrument and acknowledged that it was executed as a free act and deed.


Name: HEATHER BOSLEY
Notary Public, State of Hawaii

My Commission expires: _____



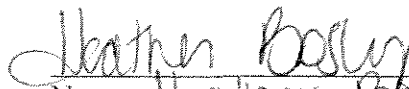
DATED: Honolulu, Hawaii _____.

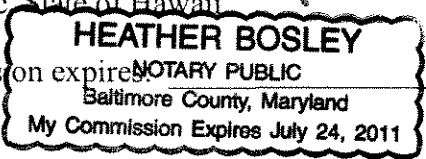


NATHALIE C. MULLINIX
Respondent

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

On this 20TH day of JUNE, 2008, before me personally appeared NATHALIE C. MULLINIX, to me known to be the person described, and who executed the foregoing instrument and acknowledged that it was executed as a free act and deed.



Name: Heather Bosley
Notary Public, State of Hawaii
My Commission expires _____


DATED: Honolulu, Hawaii, 7/1/08 _____.



ESTHER L. ERVIN
Attorney for Petitioner

IN THE MATTER OF THE REAL ESTATE LICENSE OF NATHALIE MULLINIX
REALTY UNIVERSAL, INC., A REAL ESTATE BROKER, AND NATHALIE C. MULLINIX,
A REAL ESTATE BROKER; SETTLEMENT AGREEMENT PRIOR TO FILING OF
PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER;
RICO CASE NO. REC 2006-361-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII



TRUDY I. NISHIHARA
Chairperson

July 25, 2008

DATE

STANLEY M. KURIYAMA
Vice Chairperson



LOUIS E. ABRAMS



ANNETTE AIONA




CAROL MAE A. BALL

WILLIAM S. CHEE



FRANCES T. GENDRANO

MICHELE SUNAHARA LOUDERMILK



MARK SUISO