

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

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2005 OCT 26 A 10: 16

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 OCT 27 P 1: 40

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION

In the Matter of the Real Estate Brokers')
Licenses of)
)
)
)
SRH INC., dba ERA MAUI REAL ESTATE,)
a corporation, and STEPHEN W. HOGIN,)
an individual & principal broker thereof,)
)
)
Respondents.)

REC 1999-28-L

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

In the Matter of the Real Estate Salesperson's)
License of)
)
)
)
ANDREA M. STALHUT,)
)
)
Respondent.)

HEARINGS OFFICE

2005 NOV 25 A 11: 56

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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 Respondents SRH, INC., dba ERA MAUI REAL ESTATE, a
corporation, and STEPHEN W. HOGIN, and ANDREA M. STALHUT, individuals, (hereafter

referred to collectively as "Respondents"), enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS.

1. Respondent SRH INC., dba ERA MAUI REAL ESTATE, was licensed by the REAL ESTATE COMMISSION (hereafter "Commission") as a real estate broker under license RB 14274. The license was issued in 1987 and it has an expiration date of December 31, 2006.

2. Respondent STEPHEN W. HOGIN (hereafter "Respondent Hogin") was licensed by the Commission as a real estate broker under license RB 12320. The license was issued in 1981 and it has an expiration date of December 31, 2006.

3. Respondent ANDREA M. STALHUT (hereafter "Respondent Stalhut") was licensed by the Commission as a real estate salesperson under license RS 46609. The license was issued in 1990 and it has an expiration date of December 31, 2006.

4. Respondent Stalhut's address, for purposes of this administrative action, is care of Anthony L. Ranken, Esq., 222 N. Church Street, Wailuku, Hawaii 96793.

5. The Respondents' last known place of business is 1847 South Kihei Road #103, Kihei, Hawaii 96753.

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

B. REPRESENTATIONS BY RICO.

1. RICO received a complaint from a consumer that the Respondents may have violated Hawaii's licensing laws or rules.

2. RICO investigated the complaint, and, based on its investigation RICO alleges that in or around March of 1998 the consumer purchased the Kihei Pacific Plaza (hereafter

“KPP”), which is a primarily commercial complex located at 1847 S. Kihei Road, Kihei, Hawaii, 96753. The Respondents represented the consumer in the purchase of the KPP.

3. Between March of 1998 and February of 1999, the Respondents, on behalf of the consumer, assumed and carried out various obligations related to the KPP including using funds in the KPP business account to pay KPP expenses such as water and electricity bills, and, bills for maintaining the grounds. The Respondents are also believed to have charged and collected a management fee, from the KPP business account, for services relating to the KPP during this time period.

4. The Respondents carried out functions and fulfilled financial obligations for the KPP, as set forth above, without reducing those commitments and obligations to writing, to the detriment of the consumer.

5. RICO asserts that the allegations in paragraphs B(1) - B(4), if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of the licensees in this case:

- Hawaii Administrative Rules (hereafter “HAR”) § 16-99-3(f) (The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.); and,
- HRS § 467-14(13) (violating the chapter or rules adopted pursuant thereto).

C. REPRESENTATIONS BY RESPONDENT.

1. Respondent Hogin and Respondent SRH, INC., dba ERA MAUI REAL ESTATE, are aware that they have a right to be represented by an attorney of their choice in this matter, and, they freely, knowingly and voluntary waive that right.

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

3. Respondents are aware of their right to contest this matter and to have a hearing to determine the issues in the case. Pursuant to HRS §91-9(d), Respondents freely, knowingly and voluntarily waive their right to contest this matter via the administrative hearing, and, Respondents agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents deny any and all allegations by RICO, but, enter into this Settlement Agreement as a voluntary compromise in order to conserve on the expense of proceeding with an administrative hearing.

5. Respondents acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against each of their licenses.

6. Respondents, being at all times relevant herein licensed under Chapter 467 HRS, acknowledge that if the matters alleged by RICO in this case are proven at a hearing, then they are subject to penalties including but not limited to, revocation, suspension or limitation of their licenses and civil fines.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO Case No. 1999-28-L.

D. TERMS OF SETTLEMENT.

1. Administrative fine. Respondents shall pay, jointly and severally, an administrative fine of THREE THOUSAND DOLLARS (\$3,000.00).

a. The fine shall be paid in full within THIRTY (30) days of approval of this Settlement Agreement by the Commission.

b. Payment 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.

c. Payment of the administrative fine will 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 Licenses, Without Further Hearing, Upon Respondents' Failure to Comply with the Settlement Agreement. If the Respondents fail to comply with any term of this Settlement Agreement, including failure to timely pay the administrative fine in accordance with paragraph D(1), Respondents' licenses (RB 12320, RB 14272 and RS 46609) shall each be revoked automatically and without further hearing, for a period of five (5) years, upon the filing of an affidavit by RICO, with the Commission, attesting to Respondents' failure to comply. In case of such an automatic revocation pursuant to this section, the Respondents shall turn in all indicia of their licenses to the Executive Officer of the Commission within ten (10) days after receipt of a written notice of revocation. Upon completion of the five (5) year revocation period under this section, Respondents understand that they will need to apply to the Commission for reinstatement pursuant and subject to the requirements and conditions set forth in HRS § 436B-21 and HRS § 92-17(c)(2).

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 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.

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 Respondents in the Commission's usual and customary fashion pursuant to the Hawaii Administrative Procedure Act, then Respondents agree that they, their representatives and their attorneys shall be precluded forever from objecting to or challenging, in an administrative proceeding or in any related judicial action, the Commission's handling of a proceeding against Respondents on the basis that the Commission became disqualified from considering the case because it reviewed and considered this Settlement Agreement.

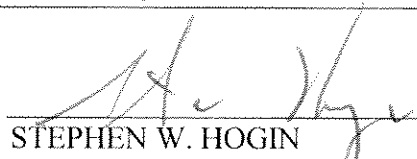
5. Ambiguities Construed to Protect the Public. Any ambiguity in this Settlement Agreement shall be read and interpreted in the manner that most completely protects the interests of the public.

6. No Reliance on RICO Representations. Other than the matters stated specifically in this Settlement Agreement, neither RICO nor anyone acting on RICO's 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 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.

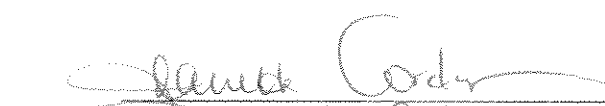
IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Kihei, Hawaii, OCT 20 2005


STEPHEN W. HOGIN
For and on behalf of himself,
For and on behalf of SRH INC., dba ERA
MAUI Real Estate,
Respondents

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

On this 20th day of October, 2005, before me personally appeared **STEPHEN W. HOGIN**, to me known to be the person described, and who executed the foregoing instrument on behalf of himself and SRH, INC., dba ERA MAUI REAL ESTATE, a corporation, and he acknowledged that he executed the same as his and their free act and deed.


Name: Jeanette Condon
Notary Public, State of Hawaii
My commission expires: 5/30/2008

DATED: Kihei, Hawaii, OCT 20 2005

Andrea M. Stalhut

ANDREA M. STALHUT
For and on behalf herself,
Respondent

STATE OF HAWAII)

CITY AND COUNTY Maui)

SS.

On this 20th day of October, 2005, before me personally appeared **ANDREA M. STALHUT**, to me known to be the person described, and who executed the foregoing instrument on behalf of herself and she acknowledged that she executed the same as her free act and deed.

Jeanette Corde
Name: Jeanette Corde
Notary Public, State of Hawaii

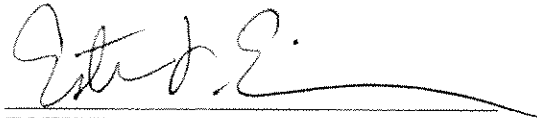
My commission expires: 5/20/2008

APPROVED AS TO FORM:

Anthony L. Ranken

ANTHONY L. RANKEN
Attorney for Respondent STALHUT

DATED: Honolulu, Hawaii, October 25, 2005.



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

In the Matter of the Real Estate Brokers' Licenses of SRH, INC., dba ERA MAUI REAL ESTATE, a corporation, and STEPHEN W. HOGIN, an individual & principal broker thereof, and In the Matter of the Real Estate Salesperson's License of ANDREA M. STALHUT; RICO Case No. REC 1999-28-L; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER

IN THE MATTER OF THE REAL ESTATE BROKERS' LICENSES OF SRH., dba ERA MAUI REAL ESTATE, A CORPORATION, AND STEPHEN W. HOGIN, AN INDIVIDUAL & PRINCIPAL BROKER THEREOF; AND IN THE MATTER OF THE REAL ESTATE SALESPERSON'S LICENSE OF ANDREA M. STALHUT; RICO CASE NO. REC 1999-28-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII



TRUDY I. NISHIHARA
Chairperson


November 23, 2005
DATE

IRIS R. OKAWA
Vice-Chairperson


LOUIS E. ABRAMS


CAROL MAE A. BALL


KATHLEEN H. KAGAWA
Ph.D.


STANLEY M. KURIYAMA


MICHELE SUNAHARA
LOUDERMILK


VERN M. YAMANAKA
PVL 07/22/05