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 Regulated Industries Complaints
 Office
 Department of Commerce and
 Consumer Affairs
 State of Hawaii
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DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

2004 AUG 27 A 10:10

HEARING 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

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In the Matter of the Real Estate Broker's) REC 2002-104-L
 Licenses of)
)
) SETTLEMENT AGREEMENT PRIOR TO
 PETER B. SAVIO, DANA G. KENNY, and) FILING OF PETITION FOR DISCIPLINARY
 BROOKS G. MALOOF,) ACTION AND COMMISSION'S FINAL
) ORDER
 Respondents.)
)

DEPT. OF COMMERCE
 AND CONSUMER AFFAIRS

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

Respondents Peter B. Savio, Dana G. Kenny, and Brooks G. Maloof (hereinafter collectively, "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 Peter B. Savio ("Respondent Savio") is licensed by the Real Estate Commission (hereinafter the "Commission") as a real estate broker under License Number RB 7459. Said license was issued on January 22, 1973 and currently has an expiration date of December 31, 2004.

2. In 1999, Respondent Savio was the principal broker of Savio Realty, Ltd., doing business as Better Homes and Gardens, which is now in bankruptcy (“Better Homes”).

3. The last known address for Respondent Savio is 931 University Ave, #105, Honolulu, Hawaii 96826.

4. Respondent Dana G. Kenny (“Respondent Kenny”) is licensed by the Commission as a real estate broker under License Number RB 16034. Said license was issued on December 6, 1991 and currently has an expiration date of December 31, 2004. In 1999, Respondent Kenny was the broker in charge of the Hilo office of Better Homes.

5. Respondent Brooks G. Maloof (“Respondent Maloof”) is licensed by the Commission as a real estate broker under License Number RB 16000. Said license was issued on January 2, 1992 and currently has an expiration date of December 31, 2004. In 1999, Respondent Maloof was a real estate broker at Better Homes.

6. The last known address for Respondent Kenny and Respondent Maloof is 162 Kinoole Street, Hilo, Hawaii 96720.

7. RICO received a complaint against Respondents from Jan C. Shannon, alleging, among other things, that Respondent Maloof failed to disclose to Mr. Shannon that Respondent Maloof was only representing the seller in the 1999 sale of the property located at Puua-Kapoho, Puna, Hawaii, TMK No. 3-1-4-1-45 (the “Property”).

8. In Section 2A of the 1999 Deposit Receipt Offer and Acceptance (“DROA”) for the Property, the buyer is stated to be represented by “themselves and assisted by Brooks Maloof Realtor[.]” Although Respondent Maloof alleges that he told Mr. Shannon that he would only “assisting” the Mr. Shannon in the transaction and Mr. Shannon signed section 2A of the DROA,

RICO alleges that use of the term “assisting” is vague and created confusion as to whether Respondent Maloof was representing in any capacity or otherwise acting as the agent of Mr. Shannon in the purchase of the Property.

9. RICO also alleges that Respondent Maloof failed to obtain the written confirmation and signature of the seller of the Property confirming disclosure of who the selling broker represented in the transaction, as required by HAR § 16-99-3.1(e) (eff. 1999).

10. RICO further alleges that Respondent Savio, the principal broker, and Respondent Kenny, the broker in charge, failed to properly supervise Respondent Maloof.

11. The foregoing allegations, if proven, could constitute violations of the following statutes governing the conduct of real estate brokers licensed in the State of Hawaii: Hawaii Revised Statutes (“H.R.S.”) § 467-1.6 (eff. 1999) (principal broker shall have direct supervision of real estate licensees and responsible for all of the brokerage firm’s contracts) and Hawaii Administrative Rules (“H.A.R.”) § 16-99-2 (eff. 1999) (broker-in charge directly in charge of and responsible to principal broker for real estate operations at a branch office), and 16-99-3.1(d) and (e) (eff. 1999) (disclosure of agency to seller must be confirmed in writing).

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

B. REPRESENTATIONS BY RESPONDENT:

1. Respondents are fully aware that they have the right to be represented by an attorney of their choosing in this matter and voluntarily waive 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 a real estate brokers by the Commission acknowledges that they may be subject to penalties including but not limited to, revocation, suspension or limitation of their licenses and civil fines, if the foregoing violations are proven at hearing.

5. Respondents do not admit nor do they agree that they have violated any law or rule.

6. RICO believes it has sufficient cause to file a Petition for Disciplinary Action against Respondents' real estate broker licenses.

7. Respondents and RICO 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.

8. Respondents and RICO agree that this Settlement Agreement is intended to resolve all of the issues relating to and raised in RICO's investigation in RICO Case No. REC 2002-104-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents agree to pay a fine, jointly and severally, in the amount of ONE THOUSAND AND NO/100 U.S. DOLLARS (\$1,000.00), the payment of which shall be due within thirty (30) days of the receipt by Respondents of written notice 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 or delivered personally 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. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely pay the administrative fine as set forth in paragraph C.1 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 with a copy thereof delivered or mailed to Respondents. 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 reinstatement pursuant and subject to the requirements and conditions set forth in HRS § 436B-21.

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 Respondent violates 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.

4. Approval of the Commission. Respondents agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is

approved by the Commission.

5. 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 agrees 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.

6. 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.

7. 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.

8. 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; provisions C.1 and C.2 constitute the

exclusive sanctions to be imposed upon each Respondent by RICO and the Commission with respect to the matters addressed herein; 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, August 20, 2004.

Peter B. Savio
PETER B. SAVIO
Respondent

DATED: 8/23/04 Hawaii, Hilo.

Dana G. Kenny
DANA G. KENNY
Respondent

DATED: 8/23/04, Hawaii, Hilo.

Brooks G. Maloof
BROOKS G. MALOOF
Respondent

DATED: Honolulu, Hawaii, AUG 27 2004.

Wendy J. Utsumi
WENDY J. UTSUMI
Attorney for Petitioner

In the Matter of the Real Estate Broker's Licenses of PETER B. SAVIO, DANA G. KENNY, and BROOKS G. MALOOF; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2002-104-L

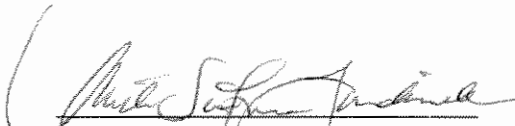
APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
State of Hawaii



LOUIS E. ABRAMS

September 24, 2004

DATE



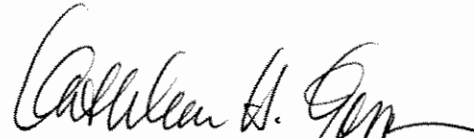
~~MARSHALL D. CHINEN~~
Michele Sunahara Loudermilk



TRUDY MISHIHARA



MITCHELL A. IMANAKA



KATHLEEN H. KAGAWA, PH.D.



JOHN OHAMA



IRIS R. OKAWA

~~PETER RICE~~ Carol Ball

VERN M. YAMANAKA

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

On this 20th day of August, 2004, before me personally appeared PETER B. SAVIO, 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.

LS


Name: Loreen Kawenehi
Notary Public, State of Hawaii

My Commission expires: 12/04/2006

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 23rd day of August, 2004, before me personally appeared DANA G. KENNY, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as his free act and deed

Wanda A. Quiacho
Name: Wanda A. Quiacho
Notary Public, State of Hawaii

My Commission expires: 6-2-2006

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 23rd day of August, 2004, before me personally appeared BROOKS G. MALOOF, 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.

Wanda A. Quioko
Name: Wanda A. Quioko
Notary Public, State of Hawaii

My Commission expires: 6-2-2006