



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2005 APR 29 P 3:40

HEARINGS OFFICE

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

In the Matter of the Real Estate)	REC 2002-39-L; REC 2002-44-L;
Broker's License of)	REC 2002-54-L; REC 2002-65-L;
)	REC 2002-128-L; REC 2002-155-L;
ANINI BEACH VACATION)	REC 2002-157-L; REC 2002-159-L;
RENTALS, INC., dba)	REC 2002-163-L
CEQUIS, KAUAI,)	
)	COMMISSION'S
Respondent.)	FINAL ORDER
)	
)	
)	
)	

COMMISSION'S FINAL ORDER


On or about March 10, 2005, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order in the above-captioned matter to the Real Estate Commission ("Commission"). Copies of the Hearings Officer's recommended decision were also transmitted to the parties. No exceptions were filed by either party.

Upon review of the entire record of these proceedings, the Commission adopts the Hearings Officer's recommended decision as the Commission's Final Order. Accordingly, the Commission finds and concludes that Respondent Anini Beach Vacation Rentals, Inc. dba Cequis, Kauai ("Respondent") violated Hawaii Revised Statutes §§ 467-14(1), (2), (3), (7), (8), (15) and (16) and Hawaii Administrative Rule §16-99-3.

For the violations found, the Commission orders that Respondent's license be revoked and that Respondent immediately submit all indicia of licensure as a real estate broker in the State of Hawaii to the Executive Officer of the Commission. The Commission further orders Respondent to pay (1) a fine in the total amount of \$15,000.00 and (2) restitution

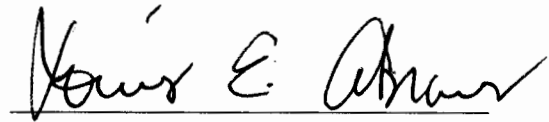
as follows: Nan Guslander - \$9,271.28; Donna and Michael Cockett - \$4,478.92; Joanna Karger - \$3,788.00; Darcy Anne Parker - \$913.00; Dotty and Robert K. Nakea - \$11,554.41; Joanne Reisman - \$500.00; and Mark R. Olin - \$22,024.00; and that Respondent pay said fine and restitution in full within sixty (60) days of the Commission's Final Order and, that in any event, full payment of the fine and restitution shall be a condition for relicensure.

DATED: Honolulu, Hawaii: April 29, 2005.



JOHN OHAMA
Chairperson

MITCHELL IMANAKA
Vice Chairperson



LOUIS E. ABRAMS
Commission Member

CAROL MAE A. BALL
Commission Member



KATHLEEN H. KAGAWA, Ph.D.
Commission Member



MICHELE SUNAHARA LOUDERMILK
Commission Member



TRUDY J. NISHIHARA
Commission Member



IRIS R. OKAWA
Commission Member



VERN M. YAMANAKA
Commission Member



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2005 MAR 10 P 3:30

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)	HEARINGS OFFICER'S
Respondent.)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
)	AND RECOMMENDED
)	ORDER

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On September 27, 2004, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), by and through its attorney, filed a petition for disciplinary action against the real estate broker's license of Anini Beach Vacation Rentals, Inc., dba Cequis, Kauai ("Respondent"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to Respondent's last known address. On November 3, 2004, the copy of the notice of hearing and pre-hearing conference sent to Respondent was returned by the Post Office as undeliverable. On December 14, 2004, an Order Granting Ex Parte Motion for Service by Publication was issued and on January 10, 2005, service of the notice of hearing and pre-hearing conference on Respondent was completed by publication.

On February 17, 2005, the hearing in the above-captioned matter was convened by the undersigned Hearings Officer pursuant to Hawaii Revised Statutes ("HRS")

Chapters 91, 92 and 467. Petitioner was represented by its attorney, Diane R. Corn, Esq. Respondent failed to appear either in person or through a representative.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT

1. Respondent was originally licensed by the Real Estate Commission (“Commission”) as a real estate broker, RB 15710, on or about March 11, 1991. Said license expired on December 31, 2004 and has been forfeited.

2. At all times relevant hereto, Celeste Miranda (“Miranda”) was the president of Respondent.

COUNT I

3. Nan Guslander (“Guslander”) was a client of Anini Beach Vacation Rentals for many years. In late September 2001, Guslander learned that Anini Beach Vacation Rentals had sold its business to Respondent. Guslander decided to retain another property management company, Prosser Realty, and gave Respondent notice of termination on October 10, 2001.

4. At the time of the termination, Respondent had booked future rentals totaling approximately \$52,000.00 and had collected deposits for those reservations. Respondent, however, did not turn those deposits over to Guslander despite repeated requests.

5. Prosser Realty subsequently allowed one booking by Respondent to be fulfilled at Guslander’s property. However, Respondent did not pay Guslander the rental income collected for that booking. As a result, Respondent still owes Guslander the sum of \$9,271.28.

COUNT II

6. Frank Harrington (“Harrington”) was the principal broker of Respondent between December of 2001 through January of 2002.

7. In December 2001, Harrington discovered that Respondent’s client trust account was overdrawn and that Respondent had transferred the funds from the trust account to another account.

8. Although Harrington advised Respondent that the removal of the funds from the trust account was illegal, Respondent did not return the funds to the trust account. As a result, Harrington resigned as Respondent's principal broker.

COUNT III

9. Between November of 2001 and February of 2002, Respondent failed to compensate Donna and Michael Cockett ("Cocketts") for the rental of their beach house in the amount of \$4,478.92. In addition, the Cocketts received complaints that Respondent had failed to refund a tenant's deposit, that cleaning services had not been paid for, and that although Respondent had collected State and accommodations taxes, those taxes were never paid or turned over to the Cocketts.

COUNT IV

10. In or about April 2002, Joanna Karger ("Karger") paid Respondent the sum of \$3,788.00 to rent a home in Kauai from April 20, 2002 to April 28, 2002. On April 15, 2002, however, Respondent notified Karger that the property was no longer available for rent. Notwithstanding that, Respondent failed to secure another property for Karger to rent or return the monies Karger had paid Respondent.

COUNT V

11. On or about January 15, 2002, Darcy Anne Parker ("Parker") deposited the sum of \$913.00 with Respondent for the rental of the "Clifford Nakea" home from April 6, 2002 through April 15, 2002. However, on March 15, 2002, Respondent informed Parker that the property had been "double-booked" and was no longer available. Notwithstanding that, Respondent failed to return the deposit to Parker or locate another property for Parker to rent.

COUNT VI

12. Respondent failed to turnover to Dotty and Robert K. Nakea III ("Nakeas") any portion of the \$11,554.41 rental income Respondent had collected for the rental of the Nakeas' vacation rental property during the period from December 2001 through and including June 2002.

COUNT VII

13. In or about June 2002, Los Angeles travel agent Joanne Reisman, dba All Travel ("Reisman") sent Respondent a deposit of \$500.00 for the rental of a vacation home between June 14, 2002 and June 24, 2002.

14. On June 7, 2002, however, Reisman discovered that Prosser Realty had taken over management of the property and that Prosser Realty had never received the deposit from Respondent. Consequently, Reisman was forced to rebook with Prosser Realty and pay an additional \$500.00 deposit.

COUNT VIII

15. From February 2002 through March 2002, Respondent rented out the vacation home of Mark R. Olin (“Olin”), but failed to deliver the rental monies, totaling \$18,200.00, to Olin.

16. In addition, during the period from November 2001 through March 2002, Respondent was responsible for paying Olin’s Hawaii excise and accommodation taxes totaling \$3,824.00. According to the Department of Taxation, however, those taxes were never paid.

COUNT IX

17. On or about January 28, 2004, a felony complaint was filed in the Superior Court of California, County of San Diego, Central Division, in a case designated as *The People of the State of California vs. Celeste Miranda, Ct. No. CD 180060, DA No. ABD301* (Criminal Case). The complaint charged Miranda with 54 felony counts, including grand theft of money and personal property and forgery in connection with her failing to provide accommodations and rental monies for the vacation homes of several victims.

18. In or about December 2004, Miranda entered a Plea of Guilty in the Criminal Case and stipulated to a sentence of 6 years and 8 months.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following provisions of the HRS and the Hawaii Administrative Rules (“HAR”):

§467-14 Revocation, suspension, and fine. In addition to any other actions authorized by law, the commission may revoke any license issued under this chapter, suspend the right of the licensee to use the license, fine any person holding a license, registration, or certificate issued under this chapter, or terminate any registration or certificate issued under this chapter, for any cause authorized by law, including but not limited to the following:

(1) Making any misrepresentation concerning any real estate transaction;

(2) Making any false promises concerning any real estate transaction of a character likely to mislead another;

(3) Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise;

* * * *

(7) Failing, within a reasonable time, to account for any moneys belonging to others which may be in the possession or under the control of the licensee;

(8) Any other conduct constituting fraudulent or dishonest dealings;

* * * *

(15) Commingling the money or other property of the licensee's principal with the licensee's own;

* * * *

(20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing. Disciplinary action may be taken by the commission whether the licensee is acting as a real estate broker, or real estate salesperson, or on the licensee's own behalf.

§16-99-3 Conduct. (a) To fully protect the general public in its real estate transactions, every licensee shall conduct business, including the licensee's own personal real estate transactions, in accordance with this section.

(b) The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.

* * * *

The preponderance of the evidence presented was sufficient to prove each of the violations charged by Petitioner. Accordingly, the Hearings Officer concludes that Respondent violated HRS §§ 467-14(1), (2), (3), (7), (8), (15) and (16) and HAR §16-99-3.

