

ESTHER L. ERVIN 7507
 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

RECEIVED
 PROF & VOCATIONAL LICENSING DIVISION
 DEPT. OF COMMERCE AND CONSUMER AFFAIRS

2005 APR 19 P 1:28 2005 APR 15 A 10:01

DEPT OF COMMERCE & CONSUMER AFFAIRS
 STATE OF HAWAII
 REGULATIONS OFFICE

DEPT. OF COMMERCE AND CONSUMER AFFAIRS

HEARINGS OFFICE

2005 MAY 24 P 2:25

Attorney for Department of Commerce and Consumer Affairs

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

In the Matter of the Real Estate Brokers' Licenses of)	REC 2003-275-L
)	
)	SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER
SOLID FOUNDATION, a real estate Corporation, DAVID MAYEDA, an individual & principal broker thereof,)	
)	
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"), through the undersigned attorney, and Respondents SOLID FOUNDATION, a real estate corporation, and, DAVID MAYEDA, an individual and Principal Broker thereof, (hereafter "Respondents"), through DAVID MAYEDA, enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS.

1. Respondents are licensed by the REAL ESTATE COMMISSION (hereafter

"Commission") as real estate brokers under Licenses RB 12678 and RB 12039, respectively. The licenses were issued in 1982 and 1981, respectively, and they will expire on or about December 31, 2006.

2. Respondents' last known place of business is 700 Bishop Street, #1603, Honolulu, Hawaii 96813. Respondents' last known mailing address is P.O. Box 17614, Honolulu, Hawaii 96817.

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

B. REPRESENTATIONS BY RICO.

1. Sometime in 2003, RICO received a complaint that Respondents may have violated Hawaii's licensing laws or rules related to providing the licensing authority with timely written notice of an adverse judgment.

2. RICO investigated the complaint, and, based on its investigation RICO alleges that on or about February 7, 2003, RICO issued Respondents a warning letter in Case No. REC 2003-2-L, regarding compliance with Hawaii Revised Statutes (hereafter "HRS") § 436B-16(a), which law requires licensees to report to the licensing authority adverse judgments, awards, disciplinary sanctions, orders, etc., arising out of their duties as a licensee. In that case Respondents failed to report an adverse 2002 District Court Judgment arising from a security deposit dispute in Goran Gracin v. Solid Foundation.

3. Six months after RICO issued the Respondents the 2/7/03 warning letter, a member of the public informed RICO of an adverse 4/11/02 District Court Judgment and a 3/24/03 Garnishee Order, issued against Respondents and which arose from a security deposit dispute. There were no records with the Commission indicating that Respondents ever reported

the 4/11/02 Judgment or the 3/24/03 Garnishee Order.

4. On or about February 18, 2004, Respondents sent the Commission a copy of two adverse District Court Judgments. The first was dated December 8, 2003 relating to a security deposit dispute in Guardado v. Solid Foundation (hereafter “Guardado Judgment”). The second was dated January 29, 2004 relating to a security deposit dispute in Murakami v. Mayeda (hereafter “Mayeda Judgment”). While the Mayeda Judgment was reported to the Commission within the 30-day time period, the Guardado Judgment was reported late.

5. RICO asserts that the allegations in paragraphs B(4) - B(6), if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate brokers in Hawaii for failing to report the 4/11/02 Judgment, failing to report the 3/24/03 Garnishee Order, and, for reporting the 12/8/03 Guardado Judgment late:

- Hawaii Revised Statutes (hereafter “HRS”) § 436B-16(a) (licensees shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination which finds the licensing liable for damages or loss caused by the licensee’s conduct in the practice of the licensee’s profession);
- HRS § 436B-19(17) (violating the chapter and/or rules and regulations relating to licensing laws).

C. REPRESENTATIONS BY RESPONDENT.

1. Respondents are aware that they have a right to be represented by an attorney of their choice in this matter, and, Respondents freely, knowingly and voluntarily 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, being at all times relevant herein licensed as real estate brokers in Hawaii, acknowledge that if the matters alleged by RICO in this case are proven at a hearing, they are subject to penalties including but not limited to, revocation, suspension or limitation of their licenses and civil fines.

5. Respondents acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against their real estate brokers' licenses.

6. Respondents enter into this Settlement Agreement as a voluntary compromise of this matter and in order to conserve on the expenses of proceeding with an administrative hearing.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO Case No. REC 2003-275-L.

D. TERMS OF SETTLEMENT.

1. Administrative fine. Respondents shall pay an administrative fine of FIVE HUNDRED DOLLARS (\$500.00).

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 Suspension of Licenses Without Further Hearing Upon Respondents' Failure to Comply with the Settlement Agreement. If Respondents fail to timely pay the administrative fine in accordance with paragraph D(1), Respondents' licenses (RB 12678 and RB 12039) shall be suspended automatically and without further hearing, for a period of six (6) months, upon the filing of an affidavit by RICO, with the Commission, attesting to Respondents' failure to comply. In case of such an automatic suspension the Respondents shall turn in all indicia of their licenses to the Executive Officer of the Commission within ten (10) days after receipt of notice of the suspension. Upon completion of the suspension 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-20.

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(4), D(5) and D(6) 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(4), D(5) and D(6) 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 or 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.

////

////

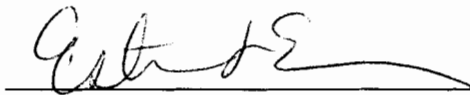
IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Honolulu, Hawaii, April 12, 2005.



DAVID MAYEDA
For and on behalf of himself
And on behalf of SOLID FOUNDATION

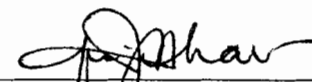
DATED: Honolulu, Hawaii April 14, 2005.



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

STATE OF HAWAII)
CITY AND COUNTY HONOLULU) SS.

On this 12th day of April, 2005, before me personally appeared **DAVID MAYEDA**, to me known to be the person described, and who executed the foregoing instrument on behalf of himself and SOLID FOUNDATION, a real estate corporation, and he acknowledged that he executed the same as his free act and deed.



Notary Public, State of Hawaii
My commission expires: 3/19/2008

LS

IN THE MATTER OF THE REAL ESTATE BROKERS' LICENSES OF SOLID FOUNDATION, A REAL ESTATE CORPORATION, AND, DAVID MAYEDA, PRINCIPAL BROKER THEREOF; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2003-275-L

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII



JOHN OHAMA -
Chairperson

May 24, 2005

DATE


MITCHELL A. IMANAKA -
Vice Chairperson



LOUIS E. ABRAMS

CAROL MAE A. BALL


KATHLEEN H. KAGAWA,
PH.D.



MICHELE SUNAHARA
LOUDERMILK



TRUDY I. NISHIHARA



IRIS R. OKAWA

VERN M. YAMANAKA