

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

DEPT. OF COMMERCE  
 & CONSUMER AFFAIRS  
 2004 OCT 22 A 9 56

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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RECEIVED  
 PROF & VOCATIONAL  
 LICENSING DIVISION

In the Matter of the  
 Real Estate Salesperson's  
 License of

) REC 2003-279-L

SHELDON H. LAU

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

Respondent.

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 (hereinafter "RICO")  
 through the undersigned attorney, and Respondent Sheldon H. Lau  
 (hereinafter "Respondent"), enter into this Settlement Agreement  
 on the terms and conditions set forth below.

A. UNCONTESTED FACTS.

1. Respondent is licensed by the REAL ESTATE COMMISSION  
 (hereinafter the "Commission") as a real estate salesperson under  
 License Number RS 55857. The license was issued on or about July

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17, 1996 and has an expiration date of December 31, 2004.

2. Respondent's last known address is 225 Queen Street, No. 17F, Honolulu, Hawaii 96813.

3. Sometime in 2003, RICO received a complaint from a member of the public claiming that Respondent may have violated Hawaii's licensing laws or rules related to advertising by realtors.

4. RICO investigated the complaint, and, based on its investigation RICO alleges that on Sunday, August 10, 2003 an advertisement for the sale of a home and open house appeared in The Honolulu Advertiser, as follows:

Brand New Open House 2-5  
3409 Kupaa Dr.  
Upgraded 4/2 home, 2 car  
carport, large 600+ sf lanai,  
deck, fenced yard, awning,  
windows. Quiet neighborhood,  
close to town. Must see!  
\$459,000 (FS). George K.H.  
Lau & Associates, Inc. Call  
536-8651 (work); or  
741-7435 (cell) ask for Sheldon

The Ad contained false or misleading information. George K.H. Lau, the Respondent's father, was deceased at the time the Ad ran, and, the company did not have a temporary principal broker appointed. In fact, during the running of the Ad on August 10, 2003, Respondent was not affiliated with any licensed broker. Further, Respondent owned the property described in the Ad at the time the Ad was placed, yet the Ad leaves the impression that it is a legitimate listing by a licensed broker rather than a "for sale by owner." The Ad does not mention that Respondent was, at the time, a licensed real estate salesperson in inactive status,

even though Hawaii Administrative Rules requires realtors, whether they are in inactive status or not, to disclose their license status in advertising material. Finally, to the extent the Ad was a "for sale by owner" listing, such is not permissible by realtors under Hawaii real estate rules and regulations.

The foregoing allegations, if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate salespersons in Hawaii: Hawaii Revised Statutes ("HRS") § 436B-19(2) (false or deceptive advertising); HRS § 436B-19(17) (violating the chapter and/or rules and regulations relating to real estate licensees); Hawaii Administrative Rules ("HAR") § HAR § 16-99-11(b) (licensees may not advertise "for sale by owner"); HAR § 16-99-11(c) (in advertising licensees shall disclose licensing status whether inactive or not); HAR § 16-99-11(e) (requirements for ads by licensees); HAR § 16-99-3(g) (licensee must inform principal broker of sales of his own property as well as reveal the same before accepting an offer from someone); and HAR § 16-99-3(w) (violating the chapter and/or rules and regulations relating to real estate licensees).

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

B. REPRESENTATIONS BY RESPONDENT.

1. Respondent is aware that he has the right to be represented by an attorney of his choice in this matter, and, Respondent freely, knowingly and voluntarily waives the right.

2. Respondent enters into this Settlement Agreement

freely, knowingly and voluntarily, and, without coercion or duress.

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

4. Respondent, being at all times relevant herein licensed as a real estate salesperson in Hawaii, acknowledges that if the matters alleged by RICO in this case are proven at a hearing, he is subject to penalties including but not limited to, revocation, suspension or limitation of his license and civil fines.

5. Respondent acknowledges that RICO has sufficient cause to file a Petition for Disciplinary Action against his real estate salesperson's license.

6. Respondent enters 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. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in Case No. REC 2003-279-L.

C. TERMS OF SETTLEMENT.

1. Administrative fine. Respondent shall pay an administrative fine of ONE THOUSAND DOLLARS (\$1,000.00). The fine may be paid in full by December 15, 2004, or, the fine may be paid in four equal installments, as follows:

- 1) \$ 250.00 by December 15, 2004;
- 2) \$ 250.00 by January 15, 2005;
- 3) \$ 250.00 by February 15, 2005; and
- 4) \$ 250.00 by March 15, 2005.

All payments, whether paid in full or via installments, 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. All payments, whether in full or by installments, will be considered timely only if they are received by RICO on or before the due date, or, if mailed they are post-marked on or before the due date.

2. Automatic Suspension of License Upon Failing to Comply with the Settlement Agreement. If Respondent fails to fully and timely pay the administrative fine set forth in paragraph C(1), Respondent's license shall be suspended automatically for a period of six (6) months upon the filing of an affidavit by RICO, with the Commission, attesting to Respondent's failure to comply. In case of such a suspension the Respondent shall turn in all indicia of his licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice of the suspension. Upon completion of the suspension period, Respondent understands that he will need to apply to the Commission for reinstatement pursuant and subject to the requirements and conditions set forth in HRS § 436B-20.

3. Settlement Agreement Not Final or Binding Until it is

Approved by the Commission. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C(4), C(5), C(6) and C(7) below, this Settlement Agreement shall not be final or binding on any of the parties unless and until it is approved by the Commission.

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 thereto but instead an administrative hearing is conducted against Respondent in the Commission's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither he, his representative or any attorney that he may retain, will object in any administrative proceeding or in any judicial action, to the Commission's proceeding against Respondent on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

5. Ambiguities Construed to Protect the 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 public.


6. No Reliance on RICO Representations. 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 Respondent to induce entry into this Settlement Agreement, and Respondent is 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.

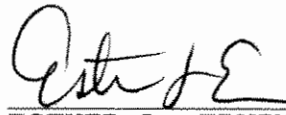
7. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly 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, October 6, 2004.

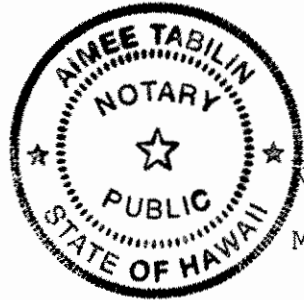
  
\_\_\_\_\_  
Sheldon H. Lau  
Respondent

DATED: Honolulu, Hawaii October 21, 2004.

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

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

On this 6<sup>TH</sup> day of OCTOBER, 2004, before me personally appeared Sheldon H. Lau, to me known to be the person described, and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.



Aimee Tabilin  
Notary Public, State of Hawaii

My commission expires: 11-11-2005




IN THE MATTER OF THE REAL ESTATE SALESPERSON'S LICENSE OF SHELDON  
H. LAU; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR  
DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2003-279-L

APPROVED AND SO ORDERED:  
REAL ESTATE COMMISSION  
STATE OF HAWAII

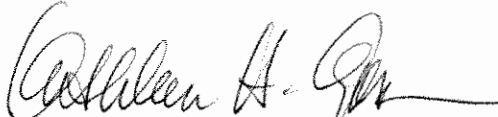
  
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JOHN CHAMA -  
Chairperson

November 24, 2004  
DATE

  
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MITCHELL A. IMANAKA -  
Vice Chairperson

  
\_\_\_\_\_  
LOUIS E. ABRAMS

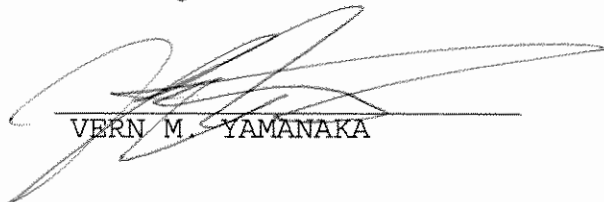
  
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CAROL MAE A. BALL

  
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KATHLEEN H. KAGAWA,  
PH.D.

  
\_\_\_\_\_  
MICHELE SUNAHARA  
LOUDERMILK

  
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TRUDY Y. NISHIHARA

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IRIS R. OKAWA

  
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VERN M. YAMANAKA