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Regulated Industries Complaints Office
Department of Commerce and
Consumer Affairs
State of Hawaii
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235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
Telephone: 586-2660

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2005 AUG 29 A 9:17

HEARINGS OFFICE

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 Salesperson's) REC 2003-51-L
License of)
)
) SETTLEMENT AGREEMENT PRIOR
) TO FILING OF PETITION FOR
JOHN GRIFFEY,) 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 (hereafter "RICO"), through the
undersigned attorney, and Respondent JOHN GRIFFEY (hereafter "Respondent"), through his
attorney MARK VAN PERNIS, 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 (hereafter
"Commission") as a real estate salesperson under license RS 53345. The license was issued on
or about September 13, 1993. It will expire on or about December 31, 2006.

2. Respondent's last known place of business is All Islands, Inc., dba Century 21 All Islands, 75-569 Alii Drive, Kailua-Kona, Hawaii 96740. Respondent's mailing address for this matter is c/o Mark Van Pernis, Esq., 75-167F Hualalai Road, Suite B, Kailua-Kona, Hawaii 96740.

3. Pursuant to Hawaii Revised Statutes (hereafter "HRS") Chapters 436B and 467, the Commission has jurisdiction over the subject matter, parties and license herein.

B. REPRESENTATIONS BY RICO.

1. Sometime in 2003, RICO received a complaint from a member of the public that the Respondent may have violated Hawaii's licensing laws or rules governing real estate licensees.

2. RICO investigated the complaint, and, based on its investigation RICO alleges that at times between September of 2000 and February of 2001, Respondent agreed to act as a landlord for the owner of a piece of property, that he signed a rental agreement with tenants as the "landlord" and thereby validated that representation in the agreement, he did so without having any written property management agreement with the owner of the property, and, he thereafter negotiated for the sale of the property, as an agent of the tenant/buyer, without proper agency disclosures.

3. RICO also alleges that in February of 2002 the Respondent accepted a \$450.00 check in connection with the sale of a second piece of property, and, said check was not paid to the Respondent by his employer at the time, All Islands Century 21.

4. RICO asserts that the allegations in paragraphs B(2) - B(3), 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 (hereafter “HRS”) § 467-14(1) (making a misrepresentation regarding a real estate transaction);
- HRS § 467-14(5) (accepting a commission or compensation from other than the licensee’s employer or broker);
- HRS § 467-14(13) (violating the chapter and/or the rules and regulations adopted pursuant to it);
- HRS § 467-14(18) (not ascertaining or disclosing material facts concerning a property for which the licensee accepts an agency so as to avoid error, misrepresentation, etc.);
- Hawaii Administrative Rules (hereafter “HAR”) § 16-99-3(f) (licensee shall reduce real property rental management agreement to writing);
- HAR § 16-99-3.1(g) (no dual agency without obtaining written consent from both buyer and seller);
- HAR § 16-99-3.1(h) (disclosure of buyer-agency, to the seller, before negotiations commence).

C. REPRESENTATIONS BY RESPONDENT.

1. Respondent denies any and all allegations made by RICO regarding this case.
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 waive 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 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 may have 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, to avoid the risk of further litigation, and, to conserve on the expenses of proceeding with an uncertain administrative hearing.

7. Respondent agrees that this Settlement Agreement is intended to resolve all of the issues raised in RICO Case No. REC 2003-51-L.

D. TERMS OF SETTLEMENT.

1. Administrative fine. Respondent shall pay an administrative fine totaling ONE THOUSAND NINE HUNDRED AND FIFTY DOLLARS (\$1,950.00). FOUR HUNDRED AND FIFTY DOLLARS of said sum represents, to RICO, the disgorgement of a potentially wrongful commission or compensation.

a. The \$1,950.00 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 shall 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 License Without Further Hearing Upon Respondent's

Failure to Comply with the Settlement Agreement. If Respondent fails to timely pay the administrative fine in accordance with paragraph D(1), Respondent's license (RS 53345) 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 Respondent's failure to comply. In case of such an automatic suspension the Respondent shall turn in all indicia of his license 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 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(4), D(5) and D(6), this 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 Respondent 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, but instead convenes an administrative hearing of this case against Respondent in the Commission's usual and customary fashion pursuant to the Hawaii Administrative Procedure Act, then Respondent agrees that he, his representative and/or his attorney shall be precluded forever from objecting to or challenging, in an administrative proceeding or in any related judicial action, the Commission's handling of the proceeding against Respondent on the basis that the Commission became disqualified from considering the case

because it reviewed and considered this Settlement Agreement.

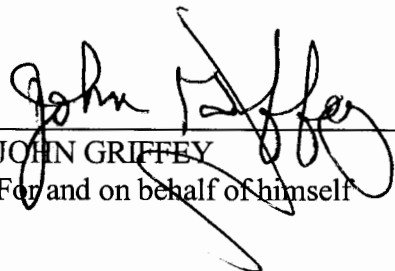
5. Ambiguities Construed to Protect the Public. Any ambiguity in this Settlement Agreement shall be read and interpreted in the manner that most completely protects the interests of the public.

6. No Reliance on Representations Other Than Those Stated Herein. 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 Respondent to induce entry into this Settlement Agreement, and other than the matters stated specifically herein Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys, including but not limited to representations concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or 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 RICO Case No. REC 2003-51-L; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

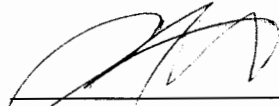
IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: ^{SH/AR} ~~Honolulu~~ ^{Kailua-Kona}, Hawaii, June 01, 2005



JOHN GRIFFEY
For and on behalf of himself

APPROVED AS TO FORM:

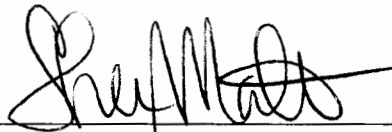
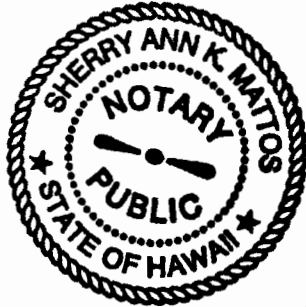


MARK VAN PERNIS, ESQ.
Attorney for Respondent

STATE OF HAWAII)
~~CITY AND COUNTY~~ Hawaii)

SS.

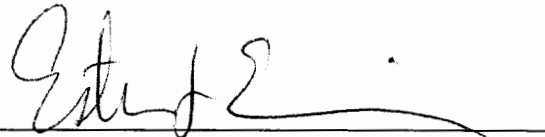
On this 1st day of June, 2005, before me personally appeared **JOHN GRIFFEY**, to me known to be the person described, and who executed the foregoing instrument on behalf of himself and he acknowledged that he executed the same as his free act and deed.



Notary Public, State of Hawaii
My commission expires:

DATED: Honolulu, Hawaii

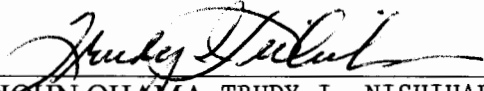
June 3, 2005



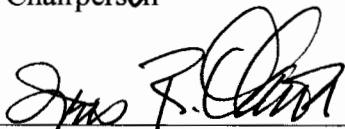
ESTHER L. ERVIN
Attorney for Department of
Commerce and Consumer Affairs

IN THE MATTER OF THE REAL ESTATE SALESPERSON'S LICENSE OF JOHN GRIFFEY; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; REC 2003-51-L

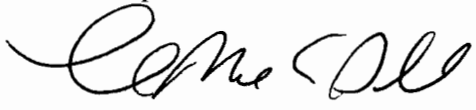
APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII


JOHN OHAMA TRUDY I. NISHIHARA
Chairperson

August 26, 2005
DATE

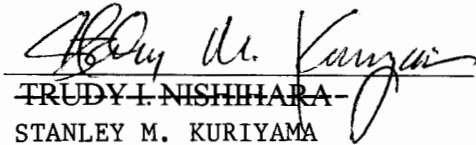

MITCHELL A. IMANAKA- IRIS R. OKAWA
Vice Chairperson


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CAROL MAE A. BALL


KATHLEEN H. KAGAWA,
PH.D.


MICHELE SUNAHARA
LOUDERMILK


~~TRUDY I. NISHIHARA-~~
STANLEY M. KURIYAMA

IRIS R. OKAWA


VERNA M. YAMANAKA

PVL 12/04