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Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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Honolulu, Hawaii 96813
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Attorney for Department of Commerce
and Consumer Affairs

REAL ESTATE COMMISSION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

2006 MAR 28 P 1:30

DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

2006 MAR -8 P 3:08

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION

In the Matter of the) REC 2004-120-L
Real Estate Brokers' Licenses of)
)
) SETTLEMENT AGREEMENT AFTER
JAMES E. McKELLAR and CERTIFIED) FILING OF PETITION FOR DISCIPLINARY
MANAGEMENT, INC.,) ACTION AND COMMISSION'S FINAL
) ORDER
Respondents.)
)

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

Respondents JAMES E. McKELLAR and CERTIFIED MANAGEMENT, INC.

(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 JAMES E. McKELLAR is licensed by the Real Estate Commission (hereinafter the "Commission") as a real estate broker under License Number RB 7506. Said

license was issued on March 19, 1973 and currently has an expiration date of December 31, 2006.

2. Respondent CERTIFIED MANAGEMENT, INC. is licensed by the Commission as a real estate broker under License Number RB 16152. Said license was issued on July 24, 1992 and currently has an expiration date of December 31, 2006.

3. The last known address for Respondents is 3179 Koapaka Street, 2nd Floor, Honolulu, Hawaii 96819.

4. On November 14, 2005, RICO filed a Petition for Disciplinary Action Against Respondents, alleging that Respondents violated Hawaii Revised Statutes ("HRS") §§ 436B-19(17), 436B-19(12), 436B-19(8), 467-14(8), 467-14(13), 467-14(16) and 467-14(20) and Hawaii Administrative Rules ("HAR") § 16-99-3(v) (hereinafter "Petition").

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

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondents enter into this Settlement Agreement freely and voluntarily and under no coercion or duress.

2. 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 the disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

3. Respondents being at all times relevant herein licensed as real estate brokers by the Commission acknowledges that they are subject to penalties including but not limited to,

revocation, suspension or limitation of their licenses and civil fines, if the allegations in the petition are proven at hearing.

4. Respondents do not admit that they have violated any law or rule, but acknowledge that RICO had sufficient cause to file a Petition for Disciplinary Action against their real estate brokers' licenses.

5. Respondents 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.

6. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2004-120-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents agrees to pay a fine in the amount of ONE THOUSAND AND NO/100 DOLLARS (\$1,000.00), the payment of which shall be due within thirty (30) days 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 to the Regulated Industries Complaints Office, Attn: Patrick Kelly, 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. 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 understands that they will need to apply to the Commission for new licenses pursuant to 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 Respondents violate 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 agree 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 agree 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; 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, February 27, 2006

CERTIFIED MANAGEMENT, INC.

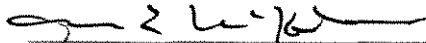


By: JAMES E. McKELLAR

Its: President

Respondent

DATED: Honolulu, Hawaii, February 27, 2006



JAMES E. McKELLAR
Respondent

DATED: Honolulu, Hawaii, MAR - 7 2006



PATRICK K. KELLY
Attorney for Department of Commerce
and Consumer Affairs

APPROVED AS TO FORM:

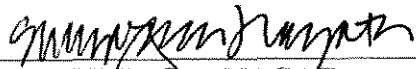


MICHAEL F. NAUYOKAS
Attorney for Respondents

IN THE MATTER OF THE REAL ESTATE BROKERS' LICENSES OF JAMES E. McKELLAR AND
CERTIFIED MANAGEMENT, INC.; SETTLEMENT AGREEMENT AFTER FILING OF PETITION FOR
DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; CASE NO. REC 2004-120-L

IN THE MATTER OF THE REAL ESTATE BROKERS' LICENSES OF JAMES E. McKELLAR AND CERTIFIED MANAGEMENT, INC.; SETTLEMENT AGREEMENT AFTER FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; CASE NO. REC 2004-120-L

REVIEWED AND RECOMMENDED FOR CONSIDERATION:



SHERYL LEE A. NAGATA
Hearings Officer

MAR - 8 2006

DATE


APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII



TRUDY I. NISHIHARA
Chairperson

March 24, 2006

DATE



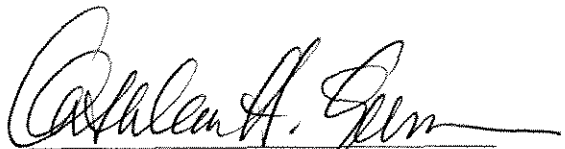
IRIS R. OKAWA
Vice Chairperson



LOUIS E. ABRAMS




CAROL MAE A. BALL



KATHLEEN H. KAGAWA,
PH.D.

STANLEY M. KURIYAMA



MICHELE SUNAHARA
LOUDERMILK

VERN M. YAMANAKA

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

On this 27 day of January, 2006, before me personally appeared James E. McKellar, to me known to be the person described, and who executed the foregoing instrument, on his own behalf and on behalf of Certified Management, Inc. as president, director, and principal broker, and acknowledged that he executed the same as his free act and deed.

TS

Candace MT Villarmia
Name: Candace MT Villarmia
Notary Public, State of Hawaii

My Commission expires: 07/09/08