

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

In the Matter of the )  
Real Estate Broker's Licenses of )  
 )  
MAHEDA REALTY, INC., a real estate )  
Corporation, and STEVEN J. GINES, an )  
individual and principal broker thereof, )  
 )  
Respondents. )  
\_\_\_\_\_ )

REC-2004-165-L

COMMISSION'S FINAL  
ORDER

COMMISSION'S FINAL ORDER

On April 4, 2006, 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"). A copy of the Hearings Officer's recommended decision was sent to Maheda Realty, Inc. and Steven J. Gines ("Respondents") at their last known address, but was returned by the postal service with the notation, "Unclaimed Refused." No exceptions were filed.

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 the preponderance of the evidence established that Respondents violated Hawaii Revised Statutes ("HRS") §§467-14(1), (2), (7), (8), (13), (16), (18) and (20); HRS §436B-17; HRS §§436B-19(2), (6), (7) and (11); and Hawaii Administrative Rules ("HAR") §16-99-3(f); and HAR §§16-99-5(a)(1) and (i).

For the violations found, Respondents' real estate brokers' licenses shall be revoked and Respondents shall immediately submit all indicia of licensure as real estate brokers in the State of Hawaii to the Executive Officer of the Commission. The Commission further orders that within sixty (60) days of the Commission's Final Order, Respondents shall

each pay a fine in the sum of \$80,000.00; and that Respondents shall pay restitution to Patti Ann Fitzsimmons the total sum of \$1,550.00. Payment of the fine shall be by certified check or money order made payable to the “State of Hawaii, Compliance Resolution Fund.” Payment of the restitution shall be made payable to the complainant. Send all payments to: Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine and the restitution shall be conditions for relicensure.

DATED: Honolulu, Hawaii: June 23, 2006.

**/s/ TRUDY I. NISHIHARA**

TRUDY I. NISHIHARA  
Chairperson

**/s/ IRIS R. OKAWA**

IRIS R. OKAWA  
Vice Chairperson

**/s/ LOUIS E. ABRAMS**

LOUIS E. ABRAMS  
Commission Member

**/s/ CAROL MAE A. BALL**

CAROL MAE A. BALL  
Commission Member

**/s/ KATHLEEN H. KAGAWA**

KATHLEEN H. KAGAWA, Ph.D.  
Commission Member

**/s/ STANLEY M. KURIYAMA**

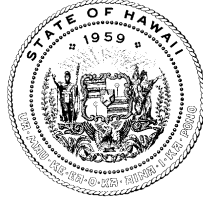
STANLEY M. KURIYAMA  
Commission Member

**/s/ MICHELE SUNAHARA LOUDERMILK**

MICHELE SUNAHARA LOUDERMILK  
Commission Member

VERN M. YAMANAKA  
Commission Member

Commission’s Final Order; *In re Maheda Realty, Inc., et al.*; REC-2004-165-L.



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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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Real Estate Brokers' Licenses of	)	
	)	HEARINGS OFFICER'S
MAHEDA REALTY, INC., a real estate	)	FINDINGS OF FACT,
Corporation, and STEVEN J. GINES, an	)	CONCLUSIONS OF LAW,
Individual and principal broker thereof,	)	AND RECOMMENDED
	)	ORDER
Respondents.	)	
_____	)	

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

I. INTRODUCTION

On August 25, 2005, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), filed a petition for disciplinary action against the real estate brokers' licenses of Maheda Realty, Inc. and Steven J. Gines ("Respondents"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

On or about November 28, 2005, copies of the notice of hearing and pre-hearing conference sent to Respondents were returned by the post office. On January 12, 2006, Petitioner filed an Ex Parte Motion for Leave to Serve by Publication. An order granting the motion was issued on January 13, 2006. On February 22, 2006, Petitioner filed an affidavit of the clerk of the Honolulu Star-Bulletin confirming publication of the notice of hearing on February 6 and 13, 2006.

On March 7, 2006, 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, Esther L. Ervin, Esq. Respondents did not appear either in person or by representation.

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 Maheda Realty, Inc. (“Maheda Realty”) was originally licensed as a real estate broker by the Real Estate Commission (“Commission”) in 1978. Respondent Maheda Realty’s real estate broker’s license, License No. RB 9511, expired on December 31, 2004.

2. At all times relevant to this matter, Respondent Steven J. Gines (“Gines”) served as the president and principal broker of Respondent Maheda Realty.

3. Respondent Gines was originally licensed as a real estate broker, License No. RB 17927, by the Commission in 2003. Said license expired on December 31, 2004.

4. In early June of 2003, Patti Ann Fitzsimmons (“Fitzsimmons”) and a niece arrived in Hawaii for a vacation. Because she was a timeshare owner with Leisure Resorts, Fitzsimmons and her niece were able to stay in a studio unit at the Leisure Resorts in Waikiki.

5. On or about June 2, 2003, Leisure Resorts sponsored an on-site presentation related to additional time share opportunities available for purchase. Fitzsimmons and her niece attended the presentation.

6. Respondent Maheda Realty conducted the presentation on behalf of Leisure Resorts. Respondent Gines as principal broker of Respondent Maheda Realty gave the presentation with the assistance of another individual who identified himself as Glen A. Jeans (“Jeans”). Jeans was not licensed as a real estate salesperson.

7. Following the presentation, Respondent Gines offered to sell Fitzsimmons a two-bedroom timeshare unit. Respondent Gines also informed Fitzsimmons that he had a studio timeshare unit available for purchase. Respondent Gines explained that the studio timeshare unit was owned by a couple but because the husband had died, the wife was

interested in selling it. Respondent Gines further stated that because the studio timeshare unit would expire in 2009, the wife wanted to sell it now for \$1,500.00, which would provide Fitzsimmons use of the unit for the next six years.

8. After Fitzsimmons decided to accept the offer to purchase the Leisure Resorts studio timeshare unit, Respondent Gines wrote up a contract. Respondent Gines explained that all of the other paperwork regarding the sale of the studio would follow in 4-6 weeks.

9. Another unidentified individual came into the room at that point and looked over the contract that Respondent Gines and Fitzsimmons had signed. The individual announced that everything looked okay and that Respondent Maheda Realty would send Fitzsimmons the final papers for the sale within a few weeks after the owner's signature was obtained.

10. Because she was on vacation, Fitzsimmons only had a credit card to pay for the studio timeshare. Respondent Gines explained that Maheda Realty did not have the capacity to process payments made by credit cards. Instead, Respondent Gines produced a First Hawaiian Bank receipt for processing credit card transactions and told Fitzsimmons that if payment was made to "PINK C," a company owned by his wife, Jo Dee Gines, "PINK C" would then write a check to Maheda Realty to pay for the studio.

11. Fitzsimmons followed Respondent Gines' instructions and allowed Respondent Gines to fill out the information on the First Hawaiian Bank credit card receipt and to make a \$1,550.00 charge payable to "PINK C." The \$1,550.00 payment represented the \$1,500.00 purchase price plus a \$50.00 documentation fee.

12. On or about June 7, 2003, the \$1,550.00 payment was charged to Fitzsimmons' credit card.

13. When she did not receive any paperwork from Respondents for the studio timeshare she had purchased, Fitzsimmons attempted to call Respondents. Fitzsimmons telephoned and left numerous messages for Respondent Gines between July of 2003 and March of 2004. During that time period, Fitzsimmons called the number listed on the contract she had signed which was also the number for Respondent Gines' cellular phone. Fitzsimmons also called the office number listed on the business card that Respondent Gines had given her, as well as other Honolulu numbers in an effort to reach Respondent Gines,

such as "Ohana Finance," where Respondent Gines appeared to have been working in late 2003 or early 2004.

14. In early August or September of 2003, Fitzsimmons was able to speak with Respondent Gines on one occasion. Respondent Gines informed Fitzsimmons that the paperwork was awaiting completion by an office assistant. Fitzsimmons did not receive any documentation thereafter and continued calling Respondent Gines.

15. In December of 2003, Respondent Gines answered his cell phone when Fitzsimmons called. Respondent Gines apologized and explained that he had confused Fitzsimmons' transaction with another that had been cancelled. Respondent Gines explained that he would resubmit the paperwork for the studio timeshare and would provide Fitzsimmons an extra week at another timeshare because of his mistake and would follow up with Fitzsimmons after the holidays. However, Respondent Gines failed to keep any of his promises.

16. Fitzsimmons has not heard from Respondent Gines since December of 2003. Respondent Gines never showed Fitzsimmons the studio timeshare she purchased and never provided Fitzsimmons with any photographs or details of the studio.

17. Fitzsimmons continued trying to reach Respondent Gines through March of 2004. Fitzsimmons also sent Respondent Gines, via certified mail, a letter requesting a refund of the \$1,550.00 that she had paid for the studio timeshare with no response.

18. Fitzsimmons subsequently discovered that the then-owners of the timeshare property, as well as their successor, had no knowledge of her transaction.

### III. CONCLUSIONS OF LAW

Petitioner has charged Respondents with violating the following provisions of the Hawaii Revised Statutes ("HRS") and the Hawaii Administrative Rule ("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;

\* \* \* \*

(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;

\* \* \* \*

(13) Violating this chapter; chapters 484, 514A, 514E, or 515; section 516-71; or the rules adopted pursuant thereto;

\* \* \* \*

(16) Converting other people's moneys to the licensee's own use;

\* \* \* \*

(18) Failing to ascertain and disclose all material facts concerning every property for which the licensee accepts the agency, so that the licensee may fulfill the licensee's obligation to avoid error, misrepresentation, or concealment of material facts; provided that for the purposes of this paragraph, the fact that an occupant has AIDS or AIDS Related Complex (ARC) or has been tested for HIV (human immunodeficiency virus) infection shall not be considered a material fact;

\* \* \* \*

(20) Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.

**§436B-17 Filing of current addresses.** Each licensee shall file with the licensing authority the licensee's current mailing, business, and residence address. It shall be the licensee's duty to provide written notice to the licensing authority of any change of address within thirty days of the change. Failure of the licensee to provide the notice shall absolve the licensing authority, executive secretary, or any designee from any duty to provide notice of any matter required by law to be provided the licensee.

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

\* \* \* \*

(2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;

\* \* \* \*

(6) Aiding and abetting an unlicensed person to directly or indirectly perform activities requiring a license;

(7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;

\* \* \* \*

(11) Engaging in business under a past or present license issued pursuant to the licensing laws, in a manner causing injury to one or more members of the public;

§16-99-3 Conduct.

\* \* \* \*



(f) The licensee, for the protection of all parties with whom the licensee deals, shall see that financial obligations and commitments regarding real estate transactions, including real property rental management agreements, are in writing, express the exact agreements of the parties, and set forth essential terms and conditions, and that copies of those agreements, at the time they are executed, are placed in the hands of all parties involved.

§16-99-5 Notification and filing of names, addresses, and changes. (a) Each individual licensee shall file with the commission and shall notify the commission of any change in writing, within ten days of the change, on a form provided by the commission:

(1) The licensee's legal name, residence address, and mailing address;

\* \* \* \*

(i) A licensee shall be subject to disciplinary action for failure to submit notifications required by this section within ten days of the change.

The undisputed evidence was sufficient to prove each of the charges brought against Respondents.

#### IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Commission find and conclude that the preponderance of the evidence established that Respondents violated HRS §§467-14(1), (2), (7), (8), (13), (16), (18) and (20); HRS §436B-17; HRS §§436B-19(2), (6), (7) and (11); HAR §16-99-3(f); and HAR §§16-99-5(a)(1) and (i).

For the violations found, the Hearings Officer recommends that Respondents' real estate brokers' licenses be revoked and that Respondents be required to immediately submit all indicia of licensure as real estate brokers in the State of Hawaii to the Executive Officer of the Commission.

The Hearings Officer also recommends that Respondents be fined the sum of \$80,000.00 each; and that Respondents be required to pay restitution to Fitzsimmons in the total sum of \$1,550.00, within sixty (60) days of the Commission's Final Order. Payment of

the fine shall be by certified check or money order made payable to the “State of Hawaii, Compliance Resolution Fund.” Payment of the restitution shall be made payable to the complainant. Send all payments to: Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, 235 South Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The Hearings Officer also recommends that payment of the fine and the restitution be made a condition for relicensure.

DATED at Honolulu, Hawaii: \_\_\_\_\_.

**/s/ CRAIG H. UYEHARA**

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CRAIG H. UYEHARA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs