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Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
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DEPT. OF COMMERCE AND CONSUMER AFFAIRS
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HEARINGS OFFICE
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Attorney for Department of Commerce
and Consumer Affairs

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

RECEIVED
PROF & VOCATIONAL
LICENSING DIVISION
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DEPT OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Real Estate Broker's License of) REC 2005-108-L
)
) SETTLEMENT AGREEMENT AFTER
LILY L. H. KONG, dba DIAMOND) FILING OF PETITION FOR DISCIPLINARY
INTERNATIONAL REAL ESTATE,) ACTION AND COMMISSION'S FINAL
) ORDER
)
Respondent.)
)

SETTLEMENT AGREEMENT AFTER 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" or "Petitioner"), through the undersigned attorney, and Respondent LILY L. H. KONG, dba DIAMOND INTERNATIONAL REAL ESTATE, (hereafter "Respondent"), by and through attorney Richard Grover, Esq., 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 broker under license RB 13539. The license was issued on or about February 8, 1984. It will expire on or about December 31, 2006.

2. Respondent's mailing address, for purposes of this matter, is c/o Richard Grover, Esq., 134 Kapahulu, Suite 809, Honolulu, Hawaii 96815. Respondent's last known business address is 1630 Kalakaua Avenue, #F-B, Honolulu, Hawaii 96826.

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

4. On or about March 20, 2006, RICO commenced this administrative action by filing, with the Office of Administrative Hearings, *a Petition for Disciplinary Action Against Real Estate Broker's License*.

5. On or about March 29, 2006, the Office of Administrative Hearings issued a *Notice of Hearing and Pre-Hearing Conference* which set a Pre-Hearing Conference for May 15, 2006, and, a Hearing for June 27, 2006.

B. RICO ALLEGATIONS

1. On or about March 7, 2005, a lawsuit was commenced against the Respondent in the District Court of the First Circuit, Honolulu Division, State of Hawaii, in Mary C. Barnes v. Lily Kong, 1SC 05-1-358.

2. Mary C. Barnes, the Plaintiff in the lawsuit, was a former tenant of the Respondent. Ms. Barnes' lawsuit against the Respondent arose out of a dispute over the refund of a security deposit arising from their former lessor/lessee relationship. In her lawsuit Plaintiff sought relief against the Respondent in the amount of \$425.00.

3. On or about March 30, 2005, Judgment was entered against the Respondent, and in favor of the Plaintiff, in the amount of \$472.90, which represented a principal amount of \$425.00 plus costs.

4. The Respondent did not report said Judgment to the Commission in writing within thirty days of said Judgment.

5. RICO asserts that the allegations in Sections B(1) - B(5), if proven at an administrative hearing before the Commission, would constitute violations of at least the following statutes governing the conduct of real estate licensees in Hawaii:

- HRS § 436B-16(a) (failure to provide written notice within thirty days to the licensing authority of any judgment . . .); and
- HRS § 436B-19(17) (violating the chapter, applicable licensing laws, or any rule or order of the licensing authority).

C. REPRESENTATIONS BY RESPONDENT

1. Respondent has consulted with and is represented by an attorney in this matter, Mr. Richard Grover, Esq., 134 Kapahulu, Suite 809, Honolulu, Hawaii 96815.

2. Respondent enters into this Settlement Agreement freely, knowingly and voluntarily, and, without any coercion or duress.

3. Respondent is aware of the right to contest this matter and to have a hearing to adjudicate the issues in the case. Pursuant to HRS §91-9(d), Respondent freely, knowingly and voluntarily waives the 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 does not admit to violating any law or rule, and, asserts that she was unaware of a requirement to report judgments to the Commission in writing within thirty days as set forth in HRS § 436B-16(a). 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.

5. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO Case No. REC 2005-108-L.

D. TERMS OF SETTLEMENT

1. Administrative fine. Respondent shall pay an administrative fine of ONE THOUSAND NO/100 DOLLARS (\$1,000.00).

The fine is due in full by no later than thirty (30) days after approval of this Settlement Agreement by the Commission.

The payment shall be made by **cashier's check or money order made payable to "State of Hawaii - Compliance Resolution Fund"** and mailed or delivered to the Regulated Industries Complaints Office, Attn: Esther L. Ervin, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813.

Payment of the 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 Revocation of License Without Further Hearing Upon Respondent's Failure to Comply with the Settlement Agreement. If Respondent fails to meet the conditions set forth in section D(1), Respondent's license (RB 13539) shall be revoked automatically for a period of five (5) years, without further hearing, upon the filing of an affidavit by RICO, with the Commission, attesting to Respondent's failure to comply. In case of such an automatic revocation, the Respondent shall turn in all indicia of his license to the Executive Officer of the Commission within ten (10) days after receipt of a notice of revocation. Upon completion of the five (5) year revocation period, if the Respondent desires to become licensed again, the

Respondent must apply to the Commission for a new license pursuant and subject to the requirements and conditions set forth in HRS § 92-17(c)(2), HRS § 436B-21, and, Hawaii Administrative Rules § 16-99-10.

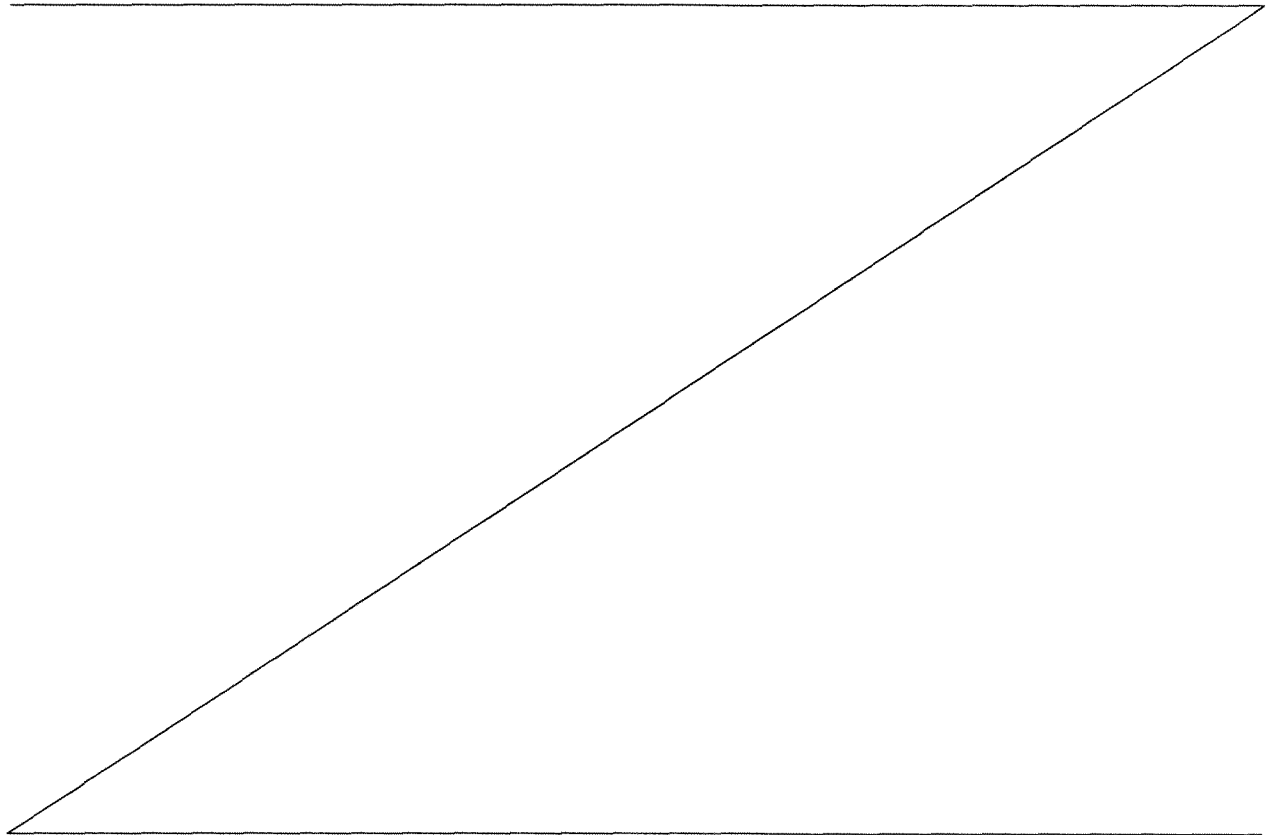
3. Entire Settlement Agreement Not Final or Binding Until it is Approved by the Commission. The parties agree that, except for the representations, agreements and covenants contained in sections D(4), D(5) and D(6) the entire Settlement Agreement shall not be final or binding on the parties unless and until it is approved by the Commission. This means that if the Commission rejects this Settlement Agreement, then by their signatures, the Respondent and RICO are still bound by Sections 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 the Respondent in the Commission's usual and customary fashion pursuant to the Hawaii Administrative Procedures Act, then the Respondent agrees that the Respondent and their representatives and 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 the 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 a manner that most completely protects the interests of the public.

6. No Reliance On Representations Other 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 the Respondent to induce entry into this Settlement Agreement, and the 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 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 18, 2006]

/s/ LILY L.H. KONG

LILY L.H. KONG, dba Diamond International Real Estate Respondent

STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU)

SS.

On this 18th day of April, 2006, before me personally appeared **LILY L.H. KONG**, to me known to be the person described, and who executed the foregoing instrument on behalf of herself and Diamond International Real Estate, and she acknowledged that she executed the same as her free act and deed.



[Signature redacted]

Name: ZENAIDA P. TORIO
Notary Public, State of Hawaii

My Commission expires: My commission exp. 4-25-07

APPROVED AS TO FORM:

/s/ RICHARD GROVER

RICHARD GROVER, Esq.
Attorney for Respondent

DATED: Honolulu, Hawaii, [May 1, 2006]

/s/ ESTHER L. ERVIN

ESTHER L. ERVIN
Attorney for Petitioner

IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSE OF LILY L.H. KONG, dba
DIAMOND INTERNATIONAL REAL ESTATE; SETTLEMENT AGREEMENT AFTER
FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL
ORDER; REC 2005-108-L

REVIEWED AND RECOMMENDED FOR CONSIDERATION:

/s/ SHERYL LEE A. NAGATA

SHERYL LEE A. NAGATA
Hearings Officer

[May 8, 2006]

DATE

APPROVED AND SO ORDERED:
REAL ESTATE COMMISSION
STATE OF HAWAII

TRUDY I. NISHIHARA
Chairperson

[May 26, 2006]

DATE

/s/ IRIS R. OKAWA

IRIS R. OKAWA
Vice-Chairperson

/s/ LOUIS E. ABRAMS

LOUIS E. ABRAMS

/s/ CAROL MAE A. BALL

CAROL MAE A. BALL

KATHLEEN H. KAGAWA, Ph.D.

/s/ STANLEY M. KURIYAMA

STANLEY M. KURIYAMA

/s/ MICHELE SUNAHARA LOUDERMILK

MICHELE SUNAHARA LOUDERMILK

VERN M. YAMANAKA

ESTHER L. ERVIN 7507
Regulated Industries Complaints Office
Department of Commerce and
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State of Hawaii
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DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2006 MAY 23 P 1: 56

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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 Broker's License of)
LILY L.H. KONG, dba DIAMOND)
INTERNATIONAL REAL ESTATE,)
Respondent.)
_____)

REC 2005-108-L

ERRATUM

ERRATUM

This pertains to the Settlement Agreement After Filing of Petition for Disciplinary Action and Commission's Final Order filed on or about May 3, 2006, and set for review by the Real Estate Commission at their May 26, 2006 meeting.

1. Erroneous omission of HRS § 467-15.5. The last sentence of section D(2), which begins on page 4, reads, "Upon completion of the five (5) year revocation period, if the Respondent desires to become licensed again, the Respondent must apply to the Commission for a new license pursuant and subject to the requirements and conditions set forth in HRS § 92-17(c)(2), HRS § 436B-21, and, Hawaii Administrative Rules § 16-99-10."

2. Correction. The last sentence of section D(2) is hereby corrected to read as follows: "Upon completion of the five (5) year revocation period, if the Respondent desires to become licensed again, the Respondent must apply to the Commission for a new license pursuant and subject to the requirements and conditions set forth in HRS § 92-17(c)(2), HRS § 436B-21, HRS § 467-15.5, and, Hawaii Administrative Rules § 16-99-10."

The undersigned has communicated with Richard Grover, Esq., attorney for the Respondent in this matter, regarding the inadvertently omitted HRS citation. Mr. Grover registered no objections to correcting the omission.

Further, upon execution the undersigned will also send Mr. Grover, via regular mail, a true and correct copy of this Erratum for his records and files.

DATED: Honolulu, Hawaii, [May 23, 2006]

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