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 Regulated Industries Complaints Office  
 Department of Commerce and Consumer Affairs  
 State of Hawaii  
 235 S. Beretania Street, 9th Floor  
 Honolulu, Hawaii 96813  
 Telephone: 586-2660

DEPT. OF COMMERCE  
 & CONSUMER AFFAIRS  
 STATE OF HAWAII  
 2005 APR 20 P 2 13

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Attorneys for Department of Commerce  
 and Consumer Affairs

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

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 PROF & VOCATIONAL  
 LICENSING DIVISION  
 2006 APR -5 P 1 00  
 DEPT OF COMMERCE  
 & CONSUMER AFFAIRS  
 STATE OF HAWAII

In the Matter of the ) REC 2005-83-L  
 Real Estate Licenses of )  
 )  
 JAMES S. KOMETANI, JAMES ) SETTLEMENT AGREEMENT PRIOR TO  
 KOMETANI, INC., and GERALDINE B. ) FILING OF PETITION FOR DISCIPLINARY  
 DIGMON, ) ACTION AND COMMISSION'S FINAL  
 ) ORDER  
 )  
 Respondents. )  
 )

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

Respondent JAMES S. KOMETANI, Respondent JAMES KOMETANI, INC., and  
 Respondent GERALDINE B. DIGMON (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 S. Kometani (hereinafter "Respondent Kometani") is licensed  
 by the Real Estate Commission (hereinafter the "Commission") as a real estate broker under

License Number RB 6866. Said license was issued on July 28, 1970 and currently has an expiration date of December 31, 2006.

2. Respondent James Kometani, Inc. (hereinafter "Respondent Kometani, Inc.") is licensed by the Commission as a real estate broker under License Number RB 13533. Said license was issued on February 24, 1984 and currently has an expiration date of December 31, 2006.

3. Respondent Geraldine B. Digmon (hereinafter "Respondent Digmon") is licensed by the Commission as a real estate salesperson under License Number RS 29075. Said license was issued on March 9, 1981 and currently has an expiration date of December 31, 2006.

4. The last known address for Respondents is 1259 S. Beretania Street, No. 4, Honolulu, Hawaii 96814.

5. At all time relevant herein, Respondent Digmon was employed by Respondent Kometani and Respondent Kometani, Inc.

6. RICO received information from the Real Estate Commission that Respondent Digmon's real estate salesperson's license had lapsed on January 1, 2003. Respondent license was subsequently renewed by the Real Estate Commission effective August 12, 2004.

7. Respondent Digmon states she was unaware her real estate salesperson's license had lapsed.

8. Despite the lapse of her license, Respondent Digmon met her obligations for continuing education. Respondent Digmon promptly remedied the lapse of her license as soon as she became aware of said lapse.

9. RICO alleges that Respondent Digmon failed to comply with the laws relating to the licensing of real estate salespersons by engaging in real estate activity without the required license in violation of Hawaii Revised Statutes ("HRS") §§ 467-7 (license required).

10. RICO alleges that Respondent Kometani and Respondent Kometani, Inc. failed to properly supervise Respondent Digmon in violation of HRS § 467-1.6(b)(7) (failure to ensure that associated real estate licensees are current and active).

11. The foregoing allegations, if proven, would constitute violations of the following statutes governing the conduct of real estate brokers licensed in the State of Hawaii: HRS § 467-7 (license required) and § 467-1.6(b)(7) (failure to ensure that associated real estate licensees are current and active).

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

**B. REPRESENTATIONS BY RESPONDENTS:**

1. Respondents are fully aware that they have the right to be represented by attorneys of their choosing in this matter and voluntarily waive that right.

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

3. 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 rights to a hearing and agree to a disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents being at all times relevant herein licensed by the Commission acknowledge that they are subject to penalties including but not limited to, revocation, suspension or limitation of their licenses and civil fines, if the foregoing violations are proven at hearing.

5. Respondents admit to the veracity of the allegations and that their acts constitute violations of the following statutes and/or regulations governing the conduct of licensees in the State of Hawaii: HRS § 467-7 (license required) and § 467-1.6(b)(7) (failure to ensure that associated real estate licensees are current and active).

6. 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.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2005-83-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents Kometani and Kometani, Inc. agree to pay a fine in the total 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 K. Kelly, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30<sup>th</sup> day to be in compliance with this Settlement Agreement.

2. Administrative fine. Respondent Digmon agrees to pay a fine in the total amount of TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00), 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 K. Kelly, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30<sup>th</sup> day to be in compliance with this Settlement Agreement.

3. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely pay the administrative fine as set forth in paragraphs C.1 and C.2 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 understand that they will need to apply to the Commission for new licenses pursuant and subject to the requirements and conditions set forth in HRS § 436B-21.

4. 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 licensees in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

5. Approval of the Commission. Respondents agree that, except for the representations, agreements and covenants contained in Paragraphs C.6, C.7, C.8 and C.9 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Commission.

6. 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.

7. 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.

8. 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.

9. 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, FEB 15, 2006


  
\_\_\_\_\_  
JAMES S. KOMETANI  
Respondent

DATED: Honolulu, Hawaii, FEB 15, 2006

JAMES KOMETANI, INC.

By:   
\_\_\_\_\_  
Its

DATED: Honolulu, Hawaii, MAR 17 2006

  
\_\_\_\_\_  
GERALDINE B. DIGMON  
Respondent


DATED: Honolulu, Hawaii, MAR 20 2006

  
\_\_\_\_\_  
PATRICK K. KELLY  
Attorney for Petitioner

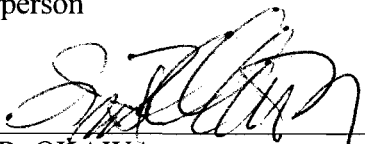
IN THE MATTER OF THE REAL ESTATE LICENSES OF JAMES S. KOMETANI, JAMES KOMETANI, INC., AND GERALDINE B. DIGMON; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; CASE NO. REC 2005-83-L

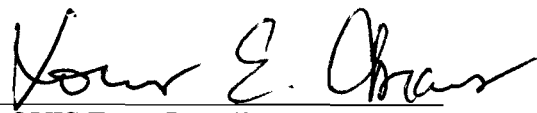
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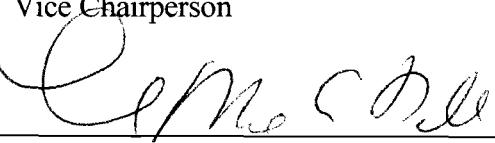
APPROVED AND SO ORDERED:  
REAL ESTATE COMMISSION  
STATE OF HAWAII

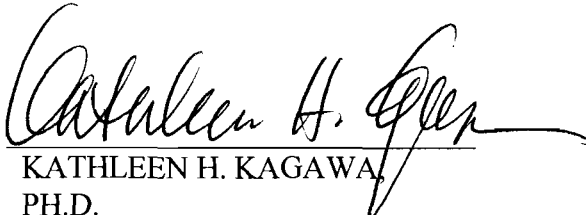
  
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TRUDY L. NISHIHARA  
Chairperson

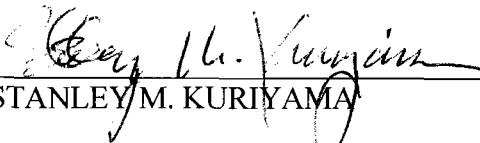
April 28, 2006  
DATE


  
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IRIS R. OKAWA  
Vice Chairperson

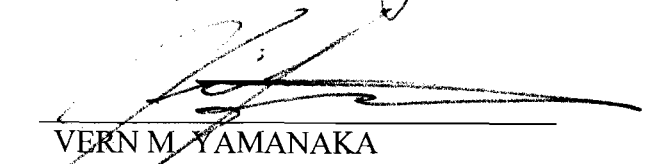
  
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LOUIS E. ABRAMS

  
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CAROL MAE A. BALL

  
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KATHLEEN H. KAGAWA  
PH.D.

  
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STANLEY M. KURIYAMA

  
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MICHELE SUNAHARA  
LOUDERMILK

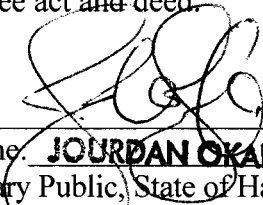
  
\_\_\_\_\_  
VERN M. YAMANAKA

PVL 07/22/05



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

On this \_\_\_ day of FEB 15 2006, 2006, before me personally appeared James S. Kometani, to me known to be the person described, and who executed the foregoing instrument, on his own behalf and on behalf of James Kometani, Inc. as president and acknowledged that he executed the same as his free act and deed.

  
\_\_\_\_\_  
Name: **JOURDAN OKADA**  
Notary Public, State of Hawaii

My commission expires: JUL 28 2008

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

On this 17<sup>th</sup> day of March, 2006, before me personally appeared  
Geraldine B. Digmon, to me known to be the person described and who executed the foregoing  
instrument and acknowledged the same as her free act and deed.

*Tracy Kekahi*

Name: \_\_\_\_\_  
Notary Public – State of Hawaii

My commission expires: \_\_\_\_\_

NOTARY PUBLIC  
COMMISSION EXPIRES 7/7/2006

18