



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2005 MAY 24 P 2: 24

HEARINGS OFFICE

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 )  
JUDITH L. BOTTOM, nka JUDITH L. )  
BUTLER, )  
and JB REALTY, INC., )  
Respondents. )

REC-98-134-L  
COMMISSION'S FINAL ORDER


COMMISSION'S FINAL ORDER


On January 24, 2005, the duly appointed Hearings Officer submitted her Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter to the Real Estate Commission ("Commission"). The parties were given an opportunity to file exceptions, and on March 23, 2005, Judith L. Bottom, nka Judith L. Butler ("Respondent Butler") submitted exceptions to the Hearings Officer's recommended decision. Petitioner did not file any response to Respondent Butler's exceptions. Oral argument was not requested.

Upon review of the entire record of this proceeding, including the exceptions, the Commission adopts the Hearings Officer's proposed decision as the Commission's Final Order and finds and concludes that Respondent violated Hawaii Revised Statutes ("HRS") §§ 436B-19(17), 467-14(7) and 467-14(13) and dismisses the charges that Respondent violated HRS § 436B-19(1) and 436B-13(c).

For the violations found, the Commission orders that Respondents' real estate broker's licenses be revoked and that they be required to return all indicia of licensure to the Executive Officer of the Commission. Indicia of licensure include wall certificates or pocket identification cards issued to Respondents indicating licensure. The Commission also orders Respondents to pay a fine in the amount of \$500.00 within sixty (60) days of the Commission's Final Order. Payment of the fine is a condition of reinstatement or relicensure.

DATED: Honolulu, Hawaii: May 24, 2005

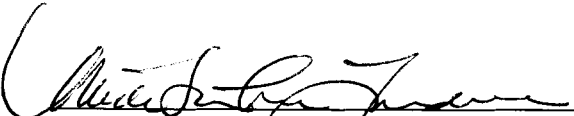
  
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JOHN OHAMA  
Chairperson

  
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LOUIS E. ABRAMS  
Commission Member

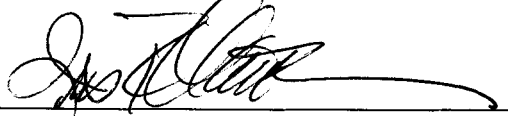
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MITCHELL IMANAKA  
Vice Chairperson

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CAROL MAE A. BALL  
Commission Member

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KATHLEEN H. KAGAWA, Ph.D.  
Commission Member

  
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MICHELE SUNAHARA LOUDERMILK  
Commission Member

  
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TRUDY I. NISHIHARA  
Commission Member

  
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IRIS R. OKAWA  
Commission Member

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VERN M. YAMANAKA  
Commission Member



7/23/04 P 12:33

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

In the Matter of the )  
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JB REALTY, INC., )  
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REC-98-134-L  
HEARINGS OFFICER'S FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
RECOMMENDED ORDER

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

I. INTRODUCTION

On June 22, 1999, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the real estate broker's licenses of Judith L. Bottom, nka Judith L. Butler ("Respondent Butler") and JB Realty, Inc. ("Respondent JB Realty"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92, 436B and 467, and the Notice of Hearing and Prehearing Conference ("Notice") was transmitted to the parties.

The hearing was initially scheduled for September 16, 1999, but was subsequently rescheduled to December 16, 1999, April 11, 2000, December 4, 2001, February 21, 2002, May 21, 2002, and September 17, 2002 because Petitioner did not serve Respondents with the Petition and Notice. Pursuant to Petitioner's request on July 22, 2004,

the Hearings Officer issued a Notice of Rescheduled Hearing and the hearing was rescheduled to September 15, 2004. Respondents were served with the Petition and Notice of Rescheduled Hearing on August 23, 2004 and by agreement of the parties, the hearing was rescheduled to October 28, 2004. The Notice of Rescheduled Hearing was transmitted to the parties on September 8, 2004, and Respondents received this notice on September 23, 2004.

On October 28, 2004, the hearing was convened by the undersigned Hearings Officer. Petitioner was represented by Craig T. Dela Cruz, Esq. Respondents failed to enter an appearance at the hearing. Notice having properly been given, the hearing proceeded as scheduled. During the course of the hearing, Petitioner requested that the record be kept open so that the Affidavits of Calvin Kimura (Exhibit "1") and Ernest Wakukawa (Exhibit "3") could be submitted. Petitioner's request was granted. The Affidavits of Calvin Kimura and Ernest Wakukawa were filed on November 19, 2004, and are received into evidence.

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 Butler was licensed as a real estate broker by the Real Estate Commission ("Commission") on January 5, 1990, license no. RB 15164. Respondent Butler's license expired on December 31, 1996 and was forfeited on January 1, 1997. Respondent Butler's license was restored on January 6, 2003 and unless renewed, it expired on December 31, 2004.

2. Respondent JB Realty's license number is RB 16235. Respondent Butler was the principal broker for Respondent JB Realty from November 18, 1992 to December 27, 1993.

3. On August 23, 1993, Respondents and Harold Saxton entered into a rental property management agreement. The agreement exclusively appointed Respondent Butler to manage Mr. Saxton's property at 98-707 Iho Place, #2-1103, Aiea, Hawaii. The agreement began in July 1993, and could be cancelled by either party upon sixty (60) days written notice to the other party.

4. By a letter dated July 2, 1998, Mr. Saxton notified Respondents that he had decided to change property managers, and requested that all funds and materials needed to manage the property be turned over to the new property manager.

5. By a letter dated July 15, 1998, Mr. Saxton requested that Respondents turn over all management material to the new property manager, and that a total of \$3,518.99 be turned over to the new property manager.

6. On August 5, 1998, the new property manager informed Mr. Saxton that she received \$2,090.00 from Respondents.

7. By a letter dated October 4, 1998, Mr. Saxton informed Respondent Butler that one month's payment of \$990.00 and the remaining repair funds of \$438.99 had not yet been turned over to the new property manager. Mr. Saxton requested that the remaining funds be turned over no later than October 30, 1998.

### III. CONCLUSIONS OF LAW

Petitioner has charged Respondents with violating HRS §§ 467-14(7), 467-14(13), 436B-19(1), 436B-19(17) and 436B-13(c) which provide:

**§ 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:

(1) Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license;

...

(17) Violating this chapter, the applicable licensing laws, or any rule or order of the licensing authority.

**§ 436B-13 Renewal of license.**

...

(c) The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first

deposit, or the failure to comply with any other requirement provided by law, shall cause the license to be automatically forfeited.

**§ 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:

. . .

(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;

. . .

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

Based on the evidence presented, the Hearings Officer concludes that Respondents failed, within a reasonable time, to account for moneys in their possession which belonged to Mr. Saxton, in violation of HRS § 467-14(7).

Petitioner also charged Respondents with violating the provisions of HRS §§ 436B-19(1) and 436B-13(c). The Hearings Officer recommends that these charges be dismissed. While the evidence presented showed that Respondent Butler's license expired on December 31, 1996 and was forfeited on January 1, 1997, no evidence was presented to show that Respondents failed to meet or maintain the conditions and requirements necessary to qualify for the granting of a license, in violation of HRS § 436B-19(1).<sup>1</sup> The Hearings Officer also recommends that the charge that Respondents violated HRS § 436B-13(c) be dismissed because that section is instructional in nature and should not be a basis for imposing discipline.

For the violations found, the Hearings Officer concludes that Respondents violated HRS §§ 436B-19(17) and 467-14(13).

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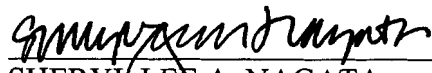
<sup>1</sup> In fact, Respondent Butler's license was restored on January 6, 2003.

IV. RECOMMENDED ORDER

Based on the above, the Hearings Officer recommends that the Commission find and conclude that Respondents violated HRS §§ 436B-19(17), 467-14(7) and 467-14(13) and dismiss the charges that Respondents violated HRS § 436B-19(1) and 436B-13(c).

For the violations found, the Hearings Officer recommends that Respondents' real estate broker's licenses be revoked and that they be required to return all indicia of licensure to the Executive Officer of the Commission. The Hearings Officer also recommends that Respondents pay a fine in the amount of \$500.00 within sixty (60) days of the Commission's Final Order, and that payment of the fine be made a condition of relicensure. Restitution was not requested.

DATED: Honolulu, Hawaii, JAN 24 2005.

  
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SHERYL LEE A. NAGATA  
Administrative Hearings Officer  
Department of Commerce  
and Consumer Affairs