

REAL ESTATE COMMISSION
Professional & Vocational Licensing Division
Department of Commerce and Consumer Affairs
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor, as required by Section 92-7(b), Hawaii Revised Statutes.

Date: Friday, January 28, 1994

Time: 9:00 a.m.

Place: Kuhina Nui Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Present: Marcus Nishikawa, Oahu Member
Barbara Dew, Oahu Member - early departure
Jerry Hirata, Hawaii Island Member
Alvin Imamura, Maui Member
Yoshiko Kano, Kauai Member
Stanley Kuriyama, Oahu Member - early departure
Carol Mon Lee, Public Member - early departure
Theo Butuyan, Public Member

Calvin Kimura, Supervising Executive Officer
Christine Rutkowski, Executive Officer
Russell Wong, Real Estate Specialist
Lee Ann Teshima, Real Estate Specialist
Jan Yamane, Real Estate Specialist
Benedyne Stone, Condominium Specialist
Diane Erickson, Deputy Attorney General
Tammy Norton, Recording Secretary
Leslie Pringle, Secretary

Susan Doyle, Deputy Director - DCCA
Shari Wong, Special Deputy Attorney General
Sheryl Nagata, Hearings Officer
Lynn Minagawa, Regulated Industries Complaints Office (RICO)
Sherrie Seki, RICO Attorney
Richard P. Rees, RICO Investigator
Marion Libbie Kamisugi, Libbie and Company, Inc.
Darlene Osterman
Don Acohido
Gretchen Huebner, Shell Development
John Y. Yamano, McCorriston, Miho, Miller and Mukai
Glenn K. Sato, Attorney for Libbie & Company
Ward F. N. Fujimoto, Attorney for Libbie & Company
Jim Turner, applicant
Brayton W. Norton, applicant
Richard K. Griffith, attorney for Brayton W. Norton
Sharon L. Daoang

Benjamin C. Daoang
Thomas A. Lilly, Management Inc.
Rand H. Totoki, applicant
Sapatumoe'ese I. Maluia, applicant

Excused: Francine Duncan, Public Member

Call to Order: The Chair called the meeting to order at 9:10 a.m., at which time quorum was established.

Chair's Report: Chair Nishikawa presented Susan Doyle, Deputy Director - DCCA, with a plaque from the Real Estate Commission in appreciation of her contribution to the Real Estate Commission. Ms. Doyle will be leaving the Department and working within the Governor's office.

Additions to the Agenda: Upon a motion by Commissioner Imamura, seconded by Commissioner Kano, it was voted on and unanimously carried to add the following to the agenda:

8. Licensing - Restoration of Forfeited Licenses
Under Two Years - Salesperson
01/01/93 Kenneth R. Brewer
9. Licensing - Questionable Applications
Rosie Rosenthal
Bertrand Bortnick dba Mar-Max Properties
James C. Turner dba Jim's Investment Management
BNB dba Resort Rentals and Sales
Kona Sun Coast Properties, Inc.

Additional Distribution: The following were distributed to the Commissioners for their consideration:

4. Chapter 91, Hawaii Revised Statutes, Adjudicatory Matters
 - a. Marion Libbie Kamisugi - Written Arguments from Clyde Allison
6. Committee Reports
 - c. Education Review Committee Report
9. Licensing - Questionable Applications
Rand H. Totoki
Jane Mary Grisham
Barry V. Brice dba Brice Realty
Alii Ohana Property Management, Inc.
Management, Inc.

Supervising Executive Secretary's Report: Calendar of Availability - January to June 1994

Commissioners were reminded to submit their calendar of availability to the Commission office for incorporation into a master calendar.

Adjudicatory Matters: The Chair called for a recess from the Commission meeting at 9:17 a.m. to discuss and deliberate on the following adjudicatory matters pursuant to Chapter 91, Hawaii Revised Statutes:

- a. Marion Libbie Kamisugi, Libbie & Company, Inc., Clyde H. Allison, Jr. and

Darlene M. Osterman, REC-92-60-L

Commissioners Dew and Kuriyama were excused from the meeting due to a conflict of interest.

Chair Nishikawa reported that Commissioners Kano, Imamura and himself are members of the Hawaii Association of Realtors Board of Directors which filed an amicus curiae in reference to the Kamisugi case. Although they are part of the Board of Directors which filed the amicus curiae, there was no contact with the parties involved. Chair Nishikawa asked if the parties before them have any objections.

Lynn Minagawa, RICO attorney, questioned whether the Commissioners involved would be able to make an objective decision.

Chair Nishikawa, Commissioners Kano and Imamura replied that they would be objective.

All parties agreed and had no objections. Oral arguments were presented.

The parties presented their arguments.

Upon a motion by Commissioner Imamura, seconded by Commissioner Butuyan, it was voted on and unanimously carried to take this matter under advisement.

Following the Commission's review, deliberation and decisions in these matters, pursuant to Chapter 91, HRS, the Chair announced that the Commission was reconvening its scheduled Commission meeting at 10:35, pursuant to Chapter 92, HRS.

Commissioners Dew and Kuriyama returned to the meeting.

Licensing:

Questionable Applications

Brayton W. Norton

Mr. Norton and Richard K. Griffith, Mr. Norton's attorney, were present to provide oral testimony regarding Mr. Norton's request for reconsideration on the denial of his application for real estate salesperson. A written brief was also submitted and distributed to the Commission members.

Mr. Griffith stated that Mr. Norton's application for licensure was denied at the July 30, 1993 Real Estate Commission based on HRS §467-8(3). Mr. Griffith further stated that it is cited in the denial letter that "a license shall not be issued to any person that does not possess a reputation for honest, truthfulness, financial integrity and fair dealing". The minutes of the Commission's July 30, 1993 meeting made reference to two prior contractor licensing board complaints against Mr. Norton, one of which was dismissed for insufficient evidence, the second resulted in a hearing and the revocation of Mr. Norton's contractor's license. There was nothing else indicated in the record with respect to the denial of Mr. Norton's license. Based upon the basis for the denial being established on "reputation", reference to specific events and traits is not evidence of reputation. In general reputation is determined by a community or general standard not by specific instances. A conclusion may be drawn from specific instances which may

not be a "reputation". Their may be instances that could effect the interpretation of the statute but does not establish an individuals reputation. A witness is required to testify to a community or general standard established by his impressions, standards, understandings in the community. In the Supreme Court, a decision which has been cited in Michaelson v. United States, the witness was barred from testifying in terms of his own personal observations, knowledge of the witness. It has to be his knowledge of the community understanding of the individual's reputation, not his own impressions. Based on that, reconsideration is warranted in this case if the Commission only considered the final order of the Contractor's Licensing Board in the Daoang case. That in itself is not evidence of Mr. Norton's reputation for honesty, truthfulness, financial integrity and fair dealing. If the Commission wishes to have testimony in that regard, then it is asked that Mr. Norton be given leave either by writing or at the next Commission meeting to present live witnesses to testify on Mr. Norton's reputation.

Mr. Griffith stated that sole consideration of the complaint in the final order meets the requirement under the statute under which Mr. Norton's license was denied under reputation, not instances of conduct.

Sherrie Seki, staff attorney with the Regulated Industries Complaints Office (RICO) was present. Ms. Seki stated that she was the staff attorney assigned to the Daoang complaints which resulted in the revocation of Mr. Norton's Contractor's licenses. Present also were Mr. and Mrs. Daoang, who were the complainants in the case which resulted in the revocation of Mr. Norton's contractors license, and Richard Rees, field investigator with RICO regarding unlicensed activity. The Daoang's were present to speak to the Commission regarding the case.

Mr. Griffith objected to the Daoang's presenting testimony. Mr. Griffith stated that there is a final order of the contractors licensing board with findings of fact which is what is before the Real Estate Commission. Mr. Griffith stated that he is not aware that the Daoang's have been in the community associated with or have had contact with Mr. Norton other than his activities during the construction of their home. Mr. Griffith further stated that this does not qualify them as a bonafide witness with evidence to judge Mr. Norton's character in the community. Their testimony will be irrelevant.

Chair Nishikawa acknowledged Mr. Griffith's objection for the record, but will allow the testimony of Mr. and Mrs. Daoang.

Mrs. Sharon Daoang stated that she is here to bear witness the kind of character which Mr. Norton displayed. The types of character traits and business dealings would carry over into other cases which Mr. Norton would be involved in. Based on things which Mr. Norton has said, promised, or done to the Daoang's and failed to do so, would make them good witnesses of Mr. Norton's reputation.

Mr. Norton requested that his application be considered in executive session.

Upon a motion by Commissioner Kano, seconded by Commissioner Imamura, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(1), "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both."

Upon a motion by Commissioner Dew, seconded by Commissioner Lee, it was voted on

and unanimously carried to move out of executive session and to take this matter under advisement.

Rand H. Totoki

Mr. Totoki was present to request that the Commission consider his request for an equivalency to three closed sales and three closed listings for a broker's experience certificate.

Mr. Totoki stated that he has not done any listing agreements and has participated in two sales transactions. Mr. Totoki is employed by Kazuo Totoki, Ltd. which is a family owned corporation with primary business focus on company owned property management, both commercial and residential properties. The company manages eight commercial properties, five of which are company owned, which consists of approximately 82% of the commercial management, and three belong to his father who is the president. They also manage residential properties consisting of five apartment buildings, three of which are company owned with a total of 106 units. Two other properties managed consists of 26 units, one building is owned by a relative and the other his father is the president of another persons corporation. The primary focus of the business is property management for company owned properties and his fathers properties.

Commissioner Imamura asked if the figure of \$4,000 listed on the application as total commissions earned during the 12 months preceding the application was correct.

Mr. Totoki answered in the affirmative and said that he is on a salary. The \$4,000 commission was for sales transactions in addition to his monthly salary.

Commissioner Dew asked if Mr. Totoki held a CPM designation.

Mr. Totoki answered in the negative and replied that he has attended one of the IREM classes and has not pursued it any further.

Chair Nishikawa asked the name of the principal broker for Kazuo Totoki, Ltd.

Mr. Totoki replied that currently there is no principal broker. He further stated that this is the reason he needs to obtain his brokers license. Their concern is for their property management business. There has been no principal broker since Mr. Ryan Totoki left in August 1993.

Mr. Totoki was informed that since Ryan Totoki's license expired on December 31, 1992, there has been no principal broker assigned to Kazuo Totoki, Ltd. since January 1, 1993. Being that there was no principal broker, Mr. Rand Totoki's license and the corporation license is inactive. Mr. Totoki was asked if the company has still been maintaining the brokerage operation since that time.

Mr. Totoki answered in the affirmative.

Mr. Totoki was informed that under the rules and regulations a principal broker be associated with the corporation for the corporation to remain active. He was further informed that being that their is no principal broker, technically Mr. Totoki's license

becomes questionable along with that of the corporation.

Mr. Totoki reported that his license is inactive.

Upon a motion by Commission Lee, seconded by Commissioner Butuyan, it was voted on and unanimously carried to take the matter under advisement.

Sapatumoe'ese Maluia

Mr. Maluia requested that his application be considered in executive session.

Upon a motion by Commissioner Hirata, seconded by Commissioner Imamura, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(1), "To consider and evaluate personal information relating to individuals applying for professional or vocational license cited in section 26-9 or both."

Upon a motion by Commissioner Hirata, seconded by Commissioner Imamura, it was voted on and unanimously carried to move out of executive session.

Upon a motion by Commissioner Dew, seconded by Commissioner Kano, it was voted on and unanimously carried to take the matter under advisement.

Shell Realty Maui, Inc.
Shell Development Corporation - Kona

Ms. Gretchen Huebner was present to answer any questions the Commission may have regarding the condominium managing agent re-registration for Shell Realty Maui, Inc. and Shell Development Corporation - Kona.

Condominium Specialist Stone reported that the applicants did not list two RICO prior complaints in their disclosure on the CMA re-registration application.

Ms. Huebner stated that she is a legal administrator and assistant secretary for both corporations. Ms. Huebner is attending the meeting as an officer of the corporations and in behalf of the principal brokers, Mr. Church and Mr. Cretton who were unable to attend today's meeting.

Ms. Huebner stated that they were not aware of the two complaints which the Real Estate Commission has notified her of. Ms. Huebner stated that no formal notice was received from RICO regarding the complaints. She further stated that last year, prior to renewal registration, Ms. Huebner sent a letter to RICO showing the complaints which Shell Corporation had on record for all of their corporations in the State of Hawaii and asked RICO to verify the information. On January 4, 1994 a letter was received back from Ms. Nakamura, RICO, stating that the information Shell Corporation has on record is what RICO shows on record as well.

Condominium Specialist Stone reported that the recent information provided by Ms. Nakamura, RICO, is inconsistent with the information which Ms. Huebner is presenting and what was put in writing regarding the complaints, specifically regarding Shell Realty Maui, Inc. According to RICO records, notice was given to the broker-in-charge at that time, Maryrose Fuqua, via telephone and correspondence for complaint TSP 93-

32-L.

Ms. Huebner noted that any and all complaints from RICO regarding the Shell Corporation will go to the principal broker who immediately turns it over to the legal department for review and follow up. TSP 93-32-L is not on the records which Shell Corporation has nor was it on the records of RICO at the time of Ms. Huebner's correspondence with Ms. Nakamura.

Condominium Specialist Stone reported that RICO refers to a letter dated December 17, 1993 regarding TSP 93-32-L which may have been received from Maryrose Fuqua to a RICO investigator. According to RICO records, no notice was given regarding complaint TSP 93-37-L.

Commissioner Lee was excused at 11:40 a.m.

Ms. Huebner stated that she would follow up with Maryrose Fuqua who is now the broker of Shell Realty Hawaii and ask RICO to provide further information on complaint TSP 93-32-L. Ms. Huebner stated that her primary purpose of attending the meeting is to reassure the commission that on behalf of both entities, the ratio of complaints received is very few. Any complaints received are attempted to be resolved in a very prompt manner.

Upon a motion by Commissioner Kano, seconded by Commissioner Imamura, it was voted on and unanimously carried to take this matter under advisement.

Management, Inc.

Mr. Thomas A. Lilly, president and principal broker of Management, Inc., was present to answer any questions the Commission may have regarding the condominium managing agent re-registration application of Management, Inc.

Condominium Specialist Stone reported that Management, Inc. CMA re-registration application excluded seven RICO prior complaints.

Mr. Lilly stated that the Application for CMA registration has a slight flaw. The application says "circle answers to all questions and explain all yes responses on a separate sheet". There are three numeric numbers and six alpha numbers. One alpha number was circled yes. Two other items could also have been circled yes. "Yes" response to being a corporation, how do you respond to that? The information that was deleted or not included in the application does not involve this issue, but there is a problem with the form. Secondly, the statute which RICO files complaints against CMAs is also flawed, in that the managing agent of a condominium is based on policies and procedures established by the owners and board of directors. Every complaint relating to the CMA against Mr. Lilly or Management, Inc. were related to policy and procedures of the condominium and should not have been charged against Management, Inc. There should be some type of procedure whereby the condominium itself could be complained against.

Mr. Lilly explained the nature of the complaints which were filed against them and not reported to the Commission on the CMA re-registration application.

Upon a motion by Commissioner Dew, seconded by Commissioner Butuyan, it was voted on and unanimously carried to take this matter under advisement.

Approval of Minutes: Upon a motion by Commissioner Dew, seconded by Commissioner Butuyan, it was voted on and unanimously carried to approve the minutes of the November 24, 1993 subject to review and clarification of language for Recovery Fund Report, and the December 17, 1993 Real Estate Commission meetings.

Adjudicatory Matters: Chair Nishikawa called for a recess from the Commission meeting at 11:53 a.m. to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91, Hawaii Revised Statutes.

Commissioner Kuriyama was excused at 11:55 a.m.

b. Kimberly Ann Bryan, REC 92-125-L

Upon a motion by Commissioner Kano, seconded by Commissioner Dew, it was voted on and unanimously carried to approve the Settlement Agreement After Filing of Petition for Disciplinary Action.

c. Linda K. Summers dba Summers Realty, REC 93-106-L

Upon a motion by Commissioner Kano, seconded by Commissioner Dew, it was voted on and unanimously carried to approve the Settlement Agreement After Filing of Petition for Disciplinary Action subject to RICO negotiating a time deadline on real estate course sanction and the removal of the language "at the sole discretion". Commission delegates to Staff to decide on an appropriate real estate course(s) after reviewing any information on the matter.

Commission expressed serious concerns about the subject Settlement Agreement. As directed in previous communications, the language for the real estate course sanction section is not consistent with other Settlement Agreements and will cause a burden on the Commission and its Staff. There needs to be time deadlines on sanctions that require post decision responsibilities. In addition, the term "at the sole discretion of the Commission" is not consistent with others and it may preclude any delegation to Staff to examine any information on the case and determine an appropriate real estate course that is available within the next 60 days. In that, the matter of the real estate course may have to be presented at another Commission meeting with respondent and/or RICO attorney present and/or with written request and information on the matter for determination by Commission only. The Commission expressed that the subject settlement agreement is wasting time and effort by all parties involved. Special Deputy Attorney General and Supervising Executive Officer to communicate concerns to RICO CEO.

d. Fred M. Uedoi dba Komo Mai Asset Management, REC 92-265-L

Upon a motion by Commissioner Kano, seconded by Commissioner Dew, it was voted on and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action subject to RICO negotiating a time deadline on real estate course sanction and the removal of the language "at

the sole discretion". Commission delegates to Staff to decide on an appropriate real estate course after reviewing any information on the matter.

- e. David W. Richardson and Century 21 Advantage, Inc., REC 92-6-L

Upon a motion by Commissioner Kano, seconded by Commissioner Dew, it was voted on and carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action. Commissioner Imamura abstained.

- f. Hawaiian Properties, Ltd., Ronald D. Silverman, and Warren M. Sweet, REC 92-480 and REC 92-280

Upon a motion by Commissioner Kano, seconded by Commissioner Butuyan, it was voted on and unanimously carried to defer the matter to the February 25, 1994 Real Estate Commission meeting due to insufficient member voting. The vote was 4 to 2 in favor of approving the Settlement Agreement after Filing of Petition for Disciplinary Action and Commission's Final Order.

Following the Commission's review, deliberation and decisions in these matters, pursuant to Chapter 91, Hawaii Revised Statutes, Chair Nishikawa announced that the Commission was reconvening its scheduled Commission meeting at 12:20 p.m., pursuant to Chapter 92, Hawaii Revised Statutes.

Committee Reports:

Condominium and Cooperative Review Committee

Upon a motion by Commissioner Hirata, seconded by Commissioner Kano, it was voted on and unanimously carried to accept the report and the recommendations of the January 12, 1994 Condominium and Cooperative Review Committee Meeting, as follows:

1. Accept minutes of December 1, 1993 meeting.
2. Hawaii Real Estate Research and Education Center Report
 - a. Hawaii Condominium Bulletin
 - (1) The proposed mailing date for the Winter 93-94 issue is 1-21-94.
 - (2) The proposed mailing date for the Spring 94 issue is 4-1-94, depending on public hearing date for reserve rules. Possible topics to include summary of fiduciary duty chapter and proposed reserve rules.
 - (3) Commissioners and staff were invited to suggest other topics by next week to facilitate planning.
 - b. Condominium Board of Director's Guide - The final text of the chapter on fiduciary duty was distributed at the meeting. Recommend approval for transmittal to printer by January 31, 1994; subject to comments by staff. A preliminary draft of the proxies chapter was presented for information.
 - c. Media Educational Articles - Center anticipates providing the committee with specifics about this project toward the end of the fiscal year.
 - d. Condominium Seminars

- (1) The CAI Leadership Training scheduled for December 4, 1993 in Kona has been scheduled for February 19, 1994. Flyers will be inserted with the next mailing of the Hawaii Condominium Bulletin.

Recommend that outreach efforts be expanded to assure sufficient registration. Emphasize early publicity, mailouts, multiple press releases, etc.

- (2) Oahu seminar on Board Member's Fiduciary Duties is scheduled for February 26, 1994, Saturday, 9:00 a.m. to 12 noon, EWC's Jefferson Hall. Mentioned in Hawaii Condominium Bulletin.

Recommend outreach efforts as above. Emphasize early publicity, mailouts, multiple press releases, etc.

3. Condominium Governance and Management

- a. IRS - Tax Status of AOA's - Update - Specialist Okumura reported on John Morris' account of the November meeting at the Honolulu District IRS office.
- b. Case Law Review - Specialist Okumura briefly described Hawaii trial court cases.
- c. §514A-83.6(g) - Override of Owner Approval for Special Assessment - Specialist Okumura reported that an owner had inquired whether a bylaw requiring 51 percent owner approval for special assessments is superseded by the reserve statute. According to Section 514A-83.6(g), the reserve statute "shall override any requirements in an association's declaration [or] bylaws ... relating to preparation of budgets, calculation of reserve requirements, assessment and funding of reserves; [with certain exceptions]..."
Recommend that staff respond as appropriate.
- d. CAI Law Seminar - Specialist Okumura reported that Specialist Shiroma will be attending the 15th Annual Community Law Seminar to be held January 30-February 1, 1994.
- e. HCAAO Seminar, February 5, 1994 - Specialist Okumura reported that he will speak on the status of the reserve rules and will report back about the seminar.
- f. CAI Hawaii Seminar, February 5, 1994 - Specialist Okumura reported that the seminar will discuss annual meeting dos and taboos and asked if any specialists or Commissioners wish to attend.

4. Project Registration, Public Reports, and Sales to Owner-Occupants

- a. §16-107-16 - Reduction of Copies of Public Report to be Provided to the Commission by Developer
Recommend replacement of §16-107-16, Hawaii Administrative Rules, as follows: "Within thirty days of the issuance of an effective date for a public report, the developer shall provide the commission with copies of the public report at no charge, the number and color to be prescribed by the commission."

The developer shall provide the Real Estate Commission with six (6) copies of the public report. However, the developer of a condominium project located in the County of Hawaii shall provide seven (7) copies of the public report to the Commission. Copies of public reports shall be provided as follows:

Preliminary public reports - yellow paper
Final public reports - white paper
Supplementary public reports - pink paper

b. §514A-40(b)(1), HRS - County Statement Requirements - Update
Recommend the following:

- 1) Upon review of §514A-40(b)(1), Hawaii Revised Statutes, the Real Estate Commission confirmed that the verified statement from the county required by §514A-40(b)(1), Hawaii Revised Statutes ("HRS"), for a final public report for a condominium conversion shall not disclose building code or zoning ordinance violations. Therefore, building code or zoning ordinance violations should be cured prior to receipt of an effective date for a final public report for condominium conversions.
- 2) a) The Real Estate Commission will accept one statement from the following county agencies to satisfy compliance with both the building code and zoning ordinances pursuant to §514A-40(b)(1), HRS:

City and County of Honolulu - Building Department

County of Maui - Land Use and Codes
Administration, Department of
Public Works and Waste
Management

County of Kauai - Planning Department (verbal
agreement to be confirmed in
writing)

- b) The Real Estate Commission will accept one statement from the Planning Department, County of Hawaii regarding compliance with the zoning ordinances and a separate statement from the Building Division, Department of Public Works, County of Hawaii, for compliance with the building codes pursuant to §514A-40(b)(1), HRS.

The commission will consider legislation to amend §514A-40(b), HRS, to allow disclosure of zoning or building code violations in the public report provided alleged violations are cured prior to sale of that apartment.

Regarding Kuawa Orchard Estates **recommend** that based on the representations of the developers, Paterson, and their attorney Mr. Lee, and the specific circumstances, the Real Estate Commission will issue an effective date for a final public report subject to the following, which shall be disclosed in the public report:

1. Each apartment which is sold will be in compliance with County codes and ordinances as of the date of the

closing of the sale; and

2. The escrow agreement with the escrow company will provide that no closing may occur without the escrow agent having first received certification from the County of Kauai that the improvements on the apartment being sold are in compliance with all laws, rules, ordinances and other requirements in effect either at the time of construction or at the time of sale. This provision shall not be amended without Real Estate Commission consent.

Regarding E-I-E-I-O Farm Enterprises, Acknowledge that Mr. Sakai had reported difficulty in obtaining the §514A-40(b) verified county statement from the Kauai County Planning Department and that he suggested instituting a cut-off date for the county to respond.

c. §514A-31 - Gift vs Sale

Recommend responding to Ms. Grekin's request as follows:

Q - Does Father need a public report to convey a unit to Son by way of gift?

A - No. Registration of a condominium project pursuant to §514A-31, HRS, is not required where an apartment is conveyed by way of gift.

Q - If Father wills his unit, or it passes to Son by way of revocable living trust, following Father's death, would Son need a public report to sell the unit?

A - Yes. Registration of a condominium project pursuant to §514A-31, HRS, is required prior to the time when an apartment in a condominium project is offered for sale or sold where the apartment was received by will or revocable living trust following. The son has "stepped in to the shoes" of the developer.

Q - If Bank forecloses on Son's unit, would Bank be required to provide a prospective purchaser with a public report or would Son's foreclosure commissioner?

A - The Commission is unable to respond as the answer would depend on the facts and circumstances regarding the project at the time of the foreclosure.

d. Owner-Occupant Announcement - Multiple Brokers Allowed?

Recommend that to prevent any potential for consumer harm, only one broker be designated by developer in the owner-occupant announcement to receive the owner-occupant affidavit and earnest money deposit, pursuant to §514A-102(a)(8), Hawaii Revised Statutes.

e. Sixty-five Napili Way - Supplementary Public Report Required?

Recommend developer of Sixty-Five Napili Way, registration #1760 shall be required to submit a Supplementary public report pursuant to §514A-41, Hawaii Revised Statutes ("HRS"), and provide rescission rights pursuant to §514A-63, HRS, to disclose amendment of the declaration and project rules to include time share use. Any additional changes to the project should be disclosed through the Supplementary public report.

Staff to research administration of a short form supplementary public report to facilitate an inexpensive means for the prompt issuance of an effective date where material changes have occurred to the project or public report without the need for the condominium consultant to review the entire registration file.

5. Program of Work
 - a. Rulemaking, Chapter 107 - Specialist Okumura reported that the final draft will be sent to ASO for final typing. The next priority will be sending the Governor's memo and preparing the legal notice.
 - b. Condominium Association Registration
 - (1) 1994 Registrations - Specialist Stone reported that 1,068 applications have been received, 366 are registered, 638 are being reviewed, and 64 are deficient. No major problems.
 - (2) Meeting - Chaney, Brooks & Company - Specialist Stone reported on her meeting to describe the 1994 application. Those present were pleased with the elimination of the notary requirement.
 - c. Condominium Managing Agent Registration - 1994 Registrations - Specialist Stone reported that 38 managing agents had re-registered and twelve applications are deficient.
 - d. Condominium Specialist Office for the Day - Specialists Okumura and Shiroma will be on Maui on January 14, 1994, Friday, 7:45 a.m. to 4:30 p.m., Maui RICO office - 1063 Lower Main Street, Suite C-216, Wailuku, Maui.
 - e. Condominium Speaker Program - Specialist Okumura has been asked to speak on the HCAAO seminar on February 5, 1994 and will prepare a report.
 - f. Interactive Participation with Organizations -
 - (1) CAI Hawaii Chapter - Specialist Okumura reported on the November 13th seminar on association law and management presented by 22 speakers and attended by more than 70 owners, directors, managing agents, and attorneys. Specialist Okumura also reported on the December 14th annual meeting at which Ken Whitten, Len Kacher, John Morris, and Anne Anderson were elected directors.
 - (2) CAI Report - Specialist Okumura briefly discussed the 1993 annual report.
 - (3) Blue Ribbon Panel - Specialists Okumura and Stone reported on the meeting held December 1, 1993. The panel planned to meet with Senator Holt to discuss the 1994 session. The next meeting of the panel is at the call of the chair.
6. Next Meeting: Wednesday, February 9, 1994
9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Laws and Rules Review Committee

Upon a motion by Commissioner Kano, seconded by Commissioner Imamura, it was voted on and unanimously carried to accept the report and recommendations of the January 12, 1994 Laws and Rules Review Committee Meeting, as follows:

1. Approved December 1, 1993 Minutes.
2. HREREC Report
- Program of Work FY94. Recommend approval of moving "broker experience study" from Education Review Committee to Laws and Rules Review

Committee as it will eventually involve rule making and responsible staff member, Steve Gilbert, has all other programs for this committee.

- Laws and Rules Reference Manual. Completed 2 chapters and will complete 6 chapters by end of FY94.
 - Advertising brochure. First draft to be completed by 1/31/94
 - Professional Responsibility Course. 60% core material and 40% custom design material, 50 question final exam, revisions scheduled for completion by 4/94
3. Mandatory Continuing Education and Mandatory Seller Disclosure Legislation, 1994 Legislative Participation
 - discuss concerns with Senator Ikeda's staff and Representative Bunda while still awaiting meeting with Senator Holt
 - will include reporting requirements to the Legislature in housekeeping REC bill which will be similar to CMEF reporting requirements
 4. NARELLO National Disciplinary Action Data Bank
 - Specialist Teshima reported arranging for last report and followed with guidelines and implementation for reviewing applications.
 5. Condominium Hotel Operator Registration
 - Specialist Stone reported that 46 CHO registrations have been approved with 10 pending and that 1993 had a total of 75 CHO registrations. Will send last reminder letter to all previous CHO registrations who have not submitted an application and if no response, will do RICO referral if known to be operating.
 6. Hawaiian Pocket Plantation - Big Inch Land of Hawaii
 - after a review of the information, Recommend approval that Commission does not have authority to issue "no action letters", that the proposal is an interest in real property that is covered under the §467-1 definition of "real estate", that any person who offers to sell the subject interest must comply with chapter 467, and that they should seek advice of legal counsel.
 7. 1994 REC Legislative Bill
 - Recommend approval of draft #2 of proposed REC bill and submission to Chairs of Consumer Protection Committees, which is basically housekeeping measures, subject to any other nonsubstantive amendments by DCCA and staff.
 8. Next Meeting: Wednesday, February 9, 1994
10:30 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii

Education Review Committee

Upon a motion by Commissioner Hirata, seconded by Commissioner Butuyan, it was voted on and unanimously carried to accept the report and recommendations of the January 27, 1994 Education Review Committee Meeting, as follows:

1. Accept minutes of June 24, 1993 and December 16, 1993 meetings.
2. Real Estate Specialist's Report - Announcements, Introduction, Correspondence, and Additional Distribution - Recommend approval of REC appreciation plaque to honor out-going DCCA Deputy Director Susan Doyle.
3. HREREC Report
 - a. Advisory Council - Recommend appointment of Linda Coble to serve

on the advisory council.

b. Program of Work and Budget, FY94

- 1) Five Year Education and Research Plan - Recommend acceptance of the "The Hawaii Real Estate Commission's Five Year Education Plan Reference Document 1993 - 1998." Advance draft copies were distributed to Commissioners and staff prior to the meeting. HREREC requests comments by February 4, 1994. HREREC to complete final draft of five year plan with distribution to Commissioners by February 16, 1994 for consideration at the next ERC meeting, February 24, 1994.
- 2) Evaluation System for Schools, Providers, Instructors & CE Courses - HREREC to meet with Commission staff during the week of January 31, 1994 to discuss revision of evaluation forms and possible revisions to student evaluation forms.
- 3) Real Estate Summit I - Commissioner Nishikawa has been conducting preliminary meetings and reported that the target date for the summit is the month after the close of the Legislature. SES Kimura clarified that the Commission's role in producing the summit is to develop the curriculum and act as the go-between for HREREC and the various divisions within DCCA. HREREC will be responsible for printing, formatting and otherwise preparing materials, publicity, and making the logistical arrangements (ie., rooms, travel, etc.).
- 4) Broker Curriculum and Resources - Nothing to report. HREREC awaiting results from salesperson survey.
- 5) Continuing Education 93 - 94 Core Course - HREREC reports that a final update for 1993 was completed and is ready to disseminate. HREREC to present final 1993 update at the February 24, 1994 ERC meeting.
- 6) Continuing Education 1993 - 94 Three Elective Courses - HREREC distributed an outline of the fair housing course. Draft of course will be delivered to staff the week of January 31, 1994. Final draft to be distributed to Commissioners a week before the February 9, 1994 Laws and Rules Committee meeting for consideration. HREREC will develop instructor certification guidelines after Commissioners and staff have had the opportunity to review the course draft. HREREC to consider a fair housing article for Bulletin insert and solicit the assistance of the Hawaii Civil Rights Commission.
- 7) Examination - ASI Laws and Rules Report, Curriculum Review, and Item Writing - HREREC distributed a draft of "1993 Legislation and Real Estate License Exam : State Content Outline Hawaii," to be finalized by HREREC and forwarded to ASI by March 1994.
- 8) Publication Articles and Newspaper Column - HREREC provided a list of articles written and published in The Honolulu Advertiser, Honolulu Star Bulletin and Hawaii REALTOR Journal.
- 9) Real Estate Hotline - On-going.
- 10) Member Information Exchange - On-going.

- 11) Alternative Delivery of Real Estate Education - HREREC has attended on-campus seminars for informational purposes.
 - 12) Legislative Assistance Program - HREREC provided a copy of the Legislative Reference Bureau study entitled, "Non-Profit Housing Development." (LRB/1993)
 - 13) Neighbor Island Outreach - Maui Manual - Low priority.
 - 14) Four Brochures - Complete.
 - 15) Start-Up Kit for New Licensees - Changed to "Real Estate Licensees' Guide." 80% complete.
 - 16) Media Relations - HREREC distributed handout entitled "Media Relations by the Numbers" for information.
 - 17) Director/Chair Public, Legislative and U. H. Participation/Committees - HREREC presented a calendar of commitment dates.
4. Continuing Education Administration, Curriculum, Courses, Providers and Instructors
 - a. Application and Certification - Instructor - Margaret M. Moore - Recommend approval of Ms. Moore to teach the course category "Real Estate Law Update and Ethics" and "Finance."
 5. Prelicensing Education Administration, Curriculum, Schools, and Instructors - Application and Certification - Instructor - Eileen W. Luko - Recommend approval of Ms. Luko to teach the salesperson prelicensing curriculum.
 6. Prelicensing Examination - Administration - ASI responded to Ms. Carmen Lindsey's inquiry regarding a question on her real estate broker examinations, stating that Ms. Lindsey's examinations had been credited for the question. Her scores stand and will not be recalculated. Staff and ASI to convey to Ms. Lindsey the results of the investigation.
 7. Program of Work FY94 - "Real Estate Commission / State of Hawaii : Fiscal Year 1994 / Budget and Program of Work" (Draft 3 ZZ) distributed to Commissioners and staff
 - a. Instructor's Development Workshop - Hawaii Association of REALTORS requests REC funding for entry level instructor development workshops. ERC feels that HREREC is the natural conduit through which HAR might develop IDWs. Recommend that Commissioners Imamura and Dew work with staff, HREREC and HAR to explore IDW options.
 - b. Legislative Report - REC housekeeping bill has been introduced by Representative Bunda while presently under consideration by Senator Holt and Ikeda.
 - c. Annual Report and Quarterly Bulletin - Annual Report will go to printers next week. Next Bulletin is targeted for March 1994. Bulletin printing contract with the Hawaii Hochi has expired. New contract will be with the prison.
 - d. Education Waiver Administration - Recommend approval of the revised educational waiver list.
 - e. Real Estate Speaker Program - Chair Hirata and Specialist Yamane participated in the HAR Education Forum as a roundtable discussion leader and speaker, respectively.
 - f. School Files - Next edition will be mailed out this week.
 8. ARELLO and REEA Report - ARELLO Education and Research Fund Report - Recommend acceptance of the accounting update of contributions from ASI to

- NARELLO's education fund dated November 29, 1993.
9. Budget and Finance Committee Report - **Recommend acceptance** of the Budget and Finance Committee Report, Real Estate Education Fund, 2nd Quarter - FY 1994.
 10. Next Meeting: Thursday, February 24, 1994, 9:00 a.m.
Kapuaiwa Room
HRH Princess Victoria Kamamalu Building
1010 Richards Street, Second Floor
Honolulu, Hawaii 96813

Licensing:

Upon a motion by Commissioner Butuyan, seconded by Commissioner Kano, it was voted on and unanimously carried to ratify the following:

Real Estate Brokers

Merle Yuk Hoo Yim Sen dba Yim Sen Realty
Annie Marie Wachler dba Poipu Connection Realty
Judith L. Bottom dba J B Realty
Masashige Yamamoto
Anne Agor
Ayako Grubb
C L A Realty, Inc.
Roger C. Lerud dba Lerud Realty
Michiko Mason dba Mason Realty
Robert J. Lombardi
Waikiki Group, Inc.
Jeanine April Bradbury dba Earth, Wind & See Realty
Patricia K. Bales dba Rainbow Properties
Masae T. Saito
Denise M. Hearn
Dodd Real Estate, Inc.

Real Estate Branch Office

Randy D. Ragon dba Timeshare Resales Hawaii (Honolulu, Oahu)
Bali Hai Realty, Inc. (Princeville, Kauai)
Pacific Paradise Properties Corp. (Princeville, Kauai)

Site Office

Residential Resource of Hawaii, Inc.- Poha Kea Point, Phase IV, Increments 3 and 4
Nancy Montoya, Inc. - Piilani Village
Haseko Realty, Inc. - The Courtyards at Punahou
SHC-Properties, Inc. - Waikiki Landmark
Schuler Realty/Oahu, Inc. - Champions at Waikele
Hannon Realty, Ltd. - Kuhio Banyan Club
Maryl Realty, A Division of Maryl Development - Waikoloa Fairways
TNT Realty, Inc. dba Coldwell Banker Aloha Properties - The Kona Vistas
Aloha International Properties, Inc. - The Cliffs at Princeville
Towne Realty Brokerage Services, Inc. - The Gardens at Launani Valley
TNR Development dba Island Pacific Homes - Kekuilani, Village IV at Kapolei

Trade Names

Leinaala S.P. Isa dba L & I Realty
Graham Realty Property Services, Inc. dba Graham Realty
John Cowie Reilly dba John C. Reilly, Realty

Condominium Managing Agents

JVK Realty Group, Ltd.

Condominium Project Registration - Public Reports Issued December 1993

The Gardens at Launani Valley, Phase I (Final)
The Gardens at Launani Valley, Phase II (Final)
The Gardens at Launani Valley, Phase III (Final)
675 and 679 Kihapai Street (Final)
47-377E Kam Highway (Final)
28 Maha (Preliminary)
Woodrose Plantation (Final)
Alala (Final)
Akiikii Place (Final)
Kauai Knolls I Agricultural Condominium Project (Final)
Kauai Knolls II Agricultural Condominium Project (Final)
Upolu Ranch (Final)
Sunhill (Final)
Nuuanu-Ala Kimo (Final)
Pines Hale (Final)
Kulalani Village (Final)
Puu Lani Terrace (Final)
Lilikoi Terrace (Final)
Lunalilo Court (Final)
Kaleiponi E' Nehi' Nei (Final)
Kapili Park (Final)
Pacific Heights Villas (Final)
Kono Estate (Final)
Pae Ko Gardens (Preliminary)
1906 Fern Street (Final)
Northern Shield (Final)

Executive Session:

Upon a motion by Commissioner Kano, seconded by Commissioner Imamura, it was voted on and unanimously carried to enter into executive session pursuant to Section 92-5(a)(1), "To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;"

Commissioner Dew was excused at 12:40 p.m.

Upon a motion by Commissioner Kano, seconded by Commissioner Hirata, it was voted on and unanimously carried to move out of executive session.

Adjudicatory Matters:

Chair Nishikawa called for a recess from the Commission meeting at 12:40 p.m. to discuss and deliberate on the following adjudicatory matters, pursuant to Chapter 91,

Hawaii Revised Statutes:

- a. Marion Libbie Kamisugi, Libbie & Company, Inc., Clyde H. Allison, Jr. and Darlene M. Osterman, REC 92-60-L

Upon a motion by Commissioner Kano, seconded by Commissioner Butuyan, it was voted to approve the Hearings Officer's Findings of Fact, Conclusion of Law and Recommended Order. Voting for approval of the Hearings Officer's Findings of Fact, Conclusion of Law and Recommended Order were Commissioners Kano, Butuyan, Imamura, Hirata and Nishikawa.

Following the Commission's review, deliberation and decision on this matter, pursuant to Chapter 91, Hawaii Revised Statutes, Chair Nishikawa announced that the Commission was reconvening its scheduled Commission meeting at 12:45 p.m., pursuant to Chapter 92, Hawaii Revised Statutes.

Licensing:

Questionable Applications

Rand H. Totoki

After a review of the information presented and submitted by the applicant, Commissioner Butuyan moved to deny the request for an equivalency to 3 closed sales and 3 closed listings for the real estate transaction requirement to obtain a real estate broker experience certificate. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Gerald Allen Ripp

After a review of the information submitted by the applicant, Commissioner Imamura moved to deny the application for Educational Waiver based on his California salesperson real estate license which was issued prior to the January 1, 1986 California approval date. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Sapatumoe'ese Maluia

After a review of the information presented by the applicant, Commissioner Kano moved to approve the application for a real estate salesperson license. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

Jane Mary Grisham

After a review of the information submitted by the applicant, Commissioner Butuyan moved to deny the application for real estate salesperson's license as she failed to submit a complete application within the 90 days of the August 28, 1993 examination date. Further, the postmarked date on the envelop is illegible. The notary date and cashier's check date are both November 29, 1993. The application was received by the Licensing Branch on December 1, 1993. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Cora M. Ishinaga

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the application for a real estate broker's license. Commissioner Butuyan seconded the motion. The motion was voted on and unanimously carried.

Julie T. Itchner

After a review of the information submitted by the applicant, Commissioner Hirata moved to deny the application for real estate sole proprietor as an active licensee due to the proposed principal office not in compliance with the statute and rules. Commissioner Kano, seconded the motion. The motion was voted on and unanimously carried.

James S. Kawaoka

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the application for a real estate sole proprietor's license. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Kenneth B. Griffin

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the application for a real estate sole proprietor's license. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Barry V. Brice dba Brice Realty

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the application for a real estate sole proprietor's license. Commissioner Butuyan seconded the motion. The motion was voted on and unanimously carried.

Malama Realty Corp.

After a review of the information submitted by the applicant, Commissioner Hirata moved to approve the real estate broker corporation application. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Aloha International Realty, Inc.

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the real estate broker corporation application. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Team Real Estate, Inc.

After a review of the information submitted by the applicant, Commissioner Butuyan moved to approve the application for condominium managing agent re-registration. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Alii Ohana Property Management

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the application for condominium managing agent re-registration. Commissioner Butuyan seconded the motion. The motion was voted on and unanimously carried.

Shell Realty Maui, Inc.

After a review of the information submitted and presented by the applicant, Commissioner Kano moved to approve the application for condominium managing agent re-registration. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

Management, Inc.

After a review of the information submitted and presented by the applicant, Commissioner Butuyan moved to approve the application for condominium managing agent re-registration. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

City Properties, Inc.

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the application for condominium managing agent re-registration. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Shell Development Corporation - Kona

After a review of the information submitted and presented by the applicant, Commissioner Kano moved to approve the application for condominium managing agent re-registration. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Wagner & Wagner Property Management, Inc.

After a review of the information submitted by the applicant, Commissioner Hirata moved to approve the application for condominium managing agent re-registration. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

West Hawaii Property Services, Inc.

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the application for condominium hotel operator as a conditional re-registration. Staff has received a bond for applicant. If bond is in compliance then applicant to be approved without conditions. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

Property Network, Ltd.

After a review of the information submitted by the applicant, Commissioner Kano moved to approve the application for condominium hotel operator as a conditional reregistration, subject to appropriate responses and evidence to questions on bonding issue, if inappropriate, defer to next Real Estate Commission meeting. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

Kokua For Travel Agents, Inc.

Application was withdrawn.

Brayton W. Norton

After a review of the information submitted and presented by the applicant and his attorney, Commissioner Imamura moved to deny Mr. Norton's request for reconsideration of his real estate salesperson application. In addition to §467-8(3), the denial is further based on the following:

"§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:

- ...
- (8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- ...
- (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;
 - (12) Failure to comply, observe, or adhere to any law in a manner such that the licensing authority deems the applicant or holder to be an unfit or improper person to hold a license;
- ..."

Commissioner Butuyan seconded the motion. The motion was voted on and unanimously carried.

Rosie Rosenthal

After a review of the information submitted by the applicant, Commissioner Kano moved to approve application for a real estate salesperson's license. Commissioner Hirata seconded the motion. The motion was voted on and unanimously carried.

Bertrand Bortnick dba Mar-Max Properties

After a review of the information submitted by the applicant, Commissioner Hirata moved to approve the real estate broker sole proprietor application. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

James C. Turner dba Jim's Investment Management

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the application for conditional condominium managing agent re-registration. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

BNB dba Resort Rentals and Sales

After a review of the information submitted by the applicant, Commissioner Imamura moved to approve the application for condominium hotel operator as a conditional re-registration. Commissioner Kano seconded the motion. The motion was voted on and unanimously carried.

Kona Sun Coast Properties, Inc.

After a review of the information submitted by the applicant, Commissioner Kano, moved to approve the application for condominium hotel operator as a conditional re-registration. Commissioner Butuyan seconded the motion. The motion was voted on and unanimously carried.

Next Meeting:

Friday, February 25, 1994
9:00 a.m.
Kapuaiwa Room

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HRH Princess Victoria Kamamalu Building
1010 Richards Street
Honolulu, Hawaii 96813

Adjournment: Chair Nishikawa adjourned the meeting at 1:10 p.m.

Reviewed and approved by:

Calvin Kimura
Supervising Executive Officer

Date