REAL ESTATE COMMISSION

Professional and 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.

<u>Date:</u> Friday, April 25, 1997

Time: 9:00 a.m.

Place: Kapuaiwa Room

HRH Princess Victoria Kamamalu Building

1010 Richards Street, Second Floor

Honolulu, Hawaii

Present: Barbara Dew, Chair

Stanley Kuriyama, Vice Chair Charles Aki, Hawaii Member Michael Ching, Kauai Member Alvin Imamura, Maui Member Carol Mon Lee, Public Member

Calvin Kimura, Supervising Executive Officer Christine Rutkowski, Executive Officer Edmond Ikuma, Senior Real Estate Specialist Lee Ann Teshima, Real Estate Specialist Russell Wong, Real Estate Specialist

Cynthia Yee, Senior Condominium Specialist Camille Chun-Hoon, Condominium Specialist Shari Wong, Deputy Attorney General

Irene Kotaka, Secretary

Noe Noe Tom, Licensing Administration

Steve Gilbert, Hawaii Real Estate Research and Education Center

John Ohama, Incoming Commissioner

Robert Bentley Kurt Swinburnson Edward J. MacDowell

Nicki Thompson, Hawaii Association of REALTORS

Jeffrey J. McKim

Excused: Alfredo Evangelista, Public Member

Helen Lindemann, Member Nora Nomura, Public Member

Call to Order: The Chair called the meeting to order at 9:07 a.m., at which time quorum

was established.

<u>Chair's Report:</u> No report was presented.

Executive Officer's

Report:

Additional Distributions

The following materials were distributed prior to the start of the meeting:

- 6. Licensing Questionable Applications
 - a. Jeffrey McKim

- d. Patricia L. Tiner, Pat Tiner Real Estate
- 9. Committee Reports
 - a. Laws and Rules Review Committee

Additions to the Agenda

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

- Licensing Restoration of Forfeited Licenses
 Over Two Years Broker
 Harriet A. Klark
- 7. Chapter 91, Hawaii Revised Statutes, Adjudicatory Matters
 - c. Marc Weinberg, REC-LIC-96-4

<u>Registration -</u> Ratification: Upon a motion by Commissioner Lee, seconded by Commissioner Aki, it was voted on and unanimously carried to ratify the following:

Brokers - Corporations and Partnerships Hawaiian Island Consulting, Inc. James S. Reed, pb	Effective Date 02/14/97
Frank Noh Realty, Inc.	02/19/97
Cen Pac Realty, Inc.	03/05/97
Beyond The Reef Ltd.	02/27/97
Brokers - Sole Proprietor	Effective Date
Charlene Kaneshiro	02/03/97
CK Island Properties	
Edward T. Yamaguchi	01/14/97
Peter A. Aduja	02/14/97
Nancy L. Gillingham	02/04/97
Harry S. Y. Chong	02/19/97
Beatrice Nalani Kea	01/21/97
Nanikea Real Estate	
Gordon Damon	01/30/97
John R. Ferreira	01/21/97
Cherie J. Bright	02/11/97
Arthur Craig Sauer	03/03/97
Roy U. Omoto	01/06/97
Lynnette Sakamoto	02/24/97
Jonathan S. Kono	03/04/97
Jane E. Bush	03/04/97
John D. Morgan	02/20/97
Island Ventures	
William M. Cameron	02/25/97
Bryan G. Kageyama	02/07/97
<u>Tradename</u>	Effective Date
Barney B. Menor, Basic Realty	02/12/97

(fka Sandra S. W. Sakuma, Sandra Sakuma Realty) Karen Keanu Cardoza, TSM Realty	02/05/97
Corporation Name DateMaryl Realty, Inc. (fka Maryl Real Estate of Hawaii, Inc.)	Effective 02/28/97
Site Office Iwado Realty, Inc. Keawakapu Views Subdivision Gentry Realty, Ltd. Coronado, Phases C and E	Expiration Date 08/10/97 08/02/97
Clearly Maui, Inc., Re/Max Maui 08/06/97 The Meadowlands Towne Realty Brokerage Services, Inc.	09/15/97
The Terraces at Launani Valley Herbert K. Horita Realty, Inc. Royal Kunia - Site 13	07/28/97
Gibralter Pacfic Realty, Inc. The Prudential West Hawaii Realty	09/08/97
Sunpoint, Phases I and II Trinet Inc. Hawaiian Princess	10/12/97
Gerald P. Hokoana, Aikane Properties The Cliffs at Kahakuloa	10/09/97
Joseph Kealoha, Inc. Napilihau Villages	07/14/97
Watt Hawaii Realty, Inc. A'eloa Terrace	08/13/97
Schuler Realty/Oahu, Inc. Country Club Village at Salt Lake, Buildings 1, 4 and Coldwell Banker Pacific Properties, Ltd. Na Pali Haweo	
Maryl Realty, Inc. Sandalwood at Waimea	09/13/97
Education Waiver Certificate Michikane Kawasaki Ren Orville Grendahl Christopher A. Phelps Daren M. Hashimoto Thomas Lawrence Fogarty Carole A. Fogarty George Michael Deeb	Expiration Date 02/19/98 02/19/98 03/05/98 03/05/98 03/07/98 03/07/98 03/11/98
Real Estate Broker Experience Certificate Mark W. Mullen Thomas C. Clark Toshiaki Kobayashi Young Sol Angelina L. Arevalo	Expiration Date 02/19/98 03/05/98 03/11/98 03/14/98 03/17/98

Real Estate Broker (upgrade)	Effective Date
Janet Ann Cunha Jeffrey N. Mau	02/21/97 02/18/97
Henry S. Maerki	02/24/97
David C. Hamilton	02/20/97
Bonnie Mahealani Ishii Coen	02/12/97
Keiko Kuga	02/28/97
Roy H. Ninomiya	03/11/97
Continuing Education Waiver	Effective Date
William V. Powell	02/28/97
John Hideki Yanagihara	03/06/97
Masashi Yamanaka	03/11/97
Condominium Hotel Operator 1997-98 Reregistration	
Bello Realty, Inc.	01/01/97
bello Realty, Inc.	01/01/7/
Condominium Hotel Operator	
1997-98 Registration	
American Resort Marketing Inc.	02/25/97
Realty Rentals, Inc.	02/27/97
Vision Properties, Inc.	03/10/97
Condominium Managing Agent	
1997-98 Reregistration	
Bello Realty, Inc.	01/01/97
Condominium Managing Agent	
1997-98 Registration	
Marcus & Associates, Inc.	02/25/97
Commercial Realty Corp.	03/05/97
Cen Pac Properties, Inc.	03/07/97
Choon H. James	03/11/97
Homesite Inc.	03/07/97

<u>Licensing -</u> <u>Questionable</u> <u>Applications:</u>

Robert L. Bentley

Robert L. Bentley was represented by his attorney, Kurt Swinburnson. Mr. Bentley was asked if he wished his application to be considered in executive session. Mr. Bentley declined the offer.

Mr. Bentley was present to request that the denial of his application for a real estate salesperson's license be reconsidered.

Mr. Swinburnson stated that the denial letter which Mr. Bentley received was based on his failure to meet certain criteria, a reputation for honesty, truthfulness, fair dealing, etc. Mr. Swinburnson stated that he has been Mr. Bentley's attorney for many years and Mr. Bentley is also a good friend. He stated that he could personally testify as to Mr. Bentley's integrity.

Mr. Swinburnson stated that Mr. Bentley became involved in his business, B Z Building, Inc. The business experienced some financial difficulties for approximately two to three years. He had tax problems and tried to arrange agreements with other agencies but he failed. Mr. Bentley filed for bankruptcy in October/November 1995. Mr. Swinburnson stated that the case is nearly completed and that he spoke with the U. S. Bankruptcy Court and he says that his case should be closed within the next 30 days.

Mr. Swinburnson also stated that the RICO complaints were dismissed. However, one was not dismissed because the attorney did not file the dismissal.

Mr. Bentley has worked out arrangements with the State Department of Taxation. He is assessed federal taxes of \$6,800. Mr. Swinburnson stated that Patty Sharp of the IRS said that he could not obtain a tax clearance because the dismissal is still pending. He stated that even if Mr. Bentley went down to give her the money, it would not be cleared until the matter is completed. He stated that this matter should be taken care of within the next 30 days.

Mr. Swinburnson stated that Mr. Bentley is a hardworking man. Mr. Ed MacDowell was also present to offer his support to Mr. Bentley. Mr. Bentley is asking for a chance to get a fresh start so that he can start to work again.

Mr. Bentley has been working as a project manager for a construction company in Lihue for some time. He is on the AAA arbitration panel. Mr. Bentley is an arbitrator in pending arbitration cases. Mr. Swinburnson stated that he thinks that Mr. Bentley has integrity and sufficient character to allow him to start in the real estate business. Mr. Swinburnson stated that he would like to ask that the license be issued to him, even conditionally, subject to revocation if he fails to meet the criteria.

Gail Lau told him that the discharge should not take too long. Mr. Swinburnson was requesting that Mr. Bentley's license be granted, with the provision that the tax matter be taken care of within 60 days. Mr. Swinburnson stated that he believes in Mr. Bentley and that Mr. Bentley will do a great job. He also stated that Mr. Bentley would show good character, integrity and fair dealing in real estate matters.

Mr. Bentley thanked the Commission for granting his request for reconsideration. He stated that it was important that he be as truthful as he could. He answered a lot of questions "YES". He believed that he had satisfied all the tax obligations. When he found out that he was denied, he got a hold of the IRS and found out that he had an assessment from a former withholding tax. He addressed the matter immediately. He would like to be licensed as a real estate salesperson when his bankruptcy proceedings are completed and he would pay the balance if it is required.

Mr. Bentley stated that the Judge may say that he doesn't owe the \$6,800 but that he owes \$3,000 instead. If it is a small amount, he might be able to pay it off completely. Mr. Bentley stated that the State Department of Taxation was terrific. He was able to enter into a payment plan with him. He stated that the tax obligation was from a business where he was a

stockholder. Mr. Bentley stated that he has a personal tax credit of \$19-20,000 that will offset the moneys owed. He stated that the majority of the IRS tax debt would be paid.

Mr. Bentley was told that the Commission was not seeking a tax clearance. He was asked to provide documents on his outstanding tax obligations and if he had entered into a payment plan.

Mr. Bentley stated that he was willing to enter into a payment plan with the IRS as a condition for licensure. Mr. Bentley was informed that the Commission's letter, dated March 25, 1997, informed him that his application was denied unless he could provide proof of payment within 60 days. Mr. Bentley was asked if he would be able to provide proof of a payment plan within the 60 days. Mr. Bentley stated that it would be tight as it is very difficult to work with the IRS. Mr. Swinburnson was asked if the 60 days was adequate. Mr. Swinburnson stated that he thought so as Gail Lau had told him that he didn't see anything that would hold it up.

Mr. Bentley stated that he was concerned that he would be required to take the course and the exam again if he did not submit the documents within the 60 days. Mr. Bentley stated that he believes that the only outstanding item is the IRS assessment.

Mr. Bentley was asked if he would agree to wait for the documents from the IRS. Mr. Bentley stated that he would be agreeable, however, he would be disappointed as he is ready to go. Mr. Bentley was informed that his certificate of completion certificate expires in July, so he would not have to retake the course. He would, however, have to retake the examination.

Mr. Bentley was informed that the contractors license for B Z was revoked and his personal license was suspended. Mr. Bentley stated that he does not want to go into contracting again, but he may be forced to do so if he cannot get his real estate license.

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

Patricia L. Tiner, Pat Tiner Real Estate

Ms. Tiner was asked if she wished to have her application considered in executive session. Ms. Tiner declined the offer.

Ms. Tiner was present to answer any questions the Commission may have had regarding her application for a real estate sole proprietorship. There were no questions.

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

Committee Reports: Edu

Education Review Committee

Upon a motion by Commissioner Imamura, seconded by Commissioner Aki, it

was voted on and unanimously carried to accept the April 9, 1997 Education Review Committee meeting report as follows:

- 1. March 12, 1997 meeting minutes **Accept**.
- 2. HREREC Report
 - Broker Curriculum and Resources Dr. Nicholas Ordway orally presented a proposal and stated that he would be providing a written draft of the proposal for distribution for the next Education Review Committee meeting.
 - b. Continuing Education Core Course Mr. Steven W. Gilbert submitted the first draft to the Committee and requested input

and suggestions from staff and commissioners by April 30, 1997.

- 3. Continuing Education Administration Applications
 - a. 1997-98 Ratification of Course Certifications See attached list - Recommend approval.
 - Continuing Education Elective Course Application "Avoid Litigation - How to Detect Red Flags" - Eddie Flores Real Estate Continuing Education (Provider) - Recommend approval under course categories General Brokerage and Risk Management.
- Program of Work and Budget, FY97 Real Estate Speakership Program

 Report of the Supervising Executive Officer on a March 14, 1997
 speaking engagement before the Hawaii Association of Real Estate
 Schools (HARES) Accept.
- 5. ARELLO, REEA and Other Organizations Report ARELLO Education Fund Report for January 1997 **Accept.**
- 6. Next Meeting: Wednesday, May 7, 1997, 10:30 a.m.

Conference Room Lucy Henriques Medical Center 67-1123 Mamalahoa Highway Kamuela, Hawaii

Condominium Review Committee

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the April 9, 1997 Condominium Review Committee meeting report as follows:

- 1. Chair's Report Chair Lee excused from today's meeting.
- 2. HREREC Report
 - a. Hawaii Condominium Bulletin Second issue of this fiscal year has gone to the printer and should be available for distribution as early as this afternoon. Additional cost of approximately \$1,200 for insert to be included with Bulletin.
 - b. Board of Director's Guide To date no additional comments received from Commissioners or REB staff. Based on initial comments from the March CRC meeting, HREREC will move ahead and create a foldout pamphlet for use by condominium

- potential purchasers.
- c. Condominium Seminars Milton Motooka, CAI tri-chair reported on the Condorama format.
- 3. Seminars Commissioner Lee, Supervising Executive Officer Calvin Kimura and Condominium Specialists Cynthia Yee and Camille Chun-Hoon will be attending CAI's 42nd National Conference, May 1 3, 1997 in Honolulu. An alternate to be determined will attend for Commissioner Dew.
- 4. Condominium Project Registration **Recommend approval** to ratify issuance of effective dates for public reports for the month of March 1997 (additional distribution).
- 5. Program of Work
 - Rulemaking, Chapter 107 Draft Proposed Project Registration Rules (revised) **Recommend approval** to delegate to the subcommittee of Commissioners Lee, Evangelista and Kuriyama and staff the review of proposed draft and to incorporate subcommittee's findings in a final draft for consideration by the Commission for formal rulemaking.
 - b. Registrations AOAO Ratification Report
 - 1) Recommend approval to ratify issuance of effective registration dates for Associations of Apartment Owners through March 31, 1997 for the 1996 Registration (Report dated 3/27/97).
 - 2) Recommend approval to ratify issuance of effective registration dates for Associations of Apartment Owners through March 31, 1997 for the 1997 Interim Registration (Report dated 3/31/97).
- 6. Neighbor Island Outreach Condominium Review Committee meeting to be held on May 7, 1997 at 1:30 p.m. in Kamuela, Big Island.
- 7. Next meeting: Wednesday, May 7, 1997, at 1:30 p.m.
 Lucy Henriques Medical Center
 Conference Room
 67-1123 Mamalahoa Highway
 Kamuela, Hawaii

Laws and Rules Review Committee

Upon a motion by Commissioner Kuriyama, seconded by Commissioner Aki, it was voted on and unanimously carried to accept the April 9, 1997 Laws and Rules Review Committee meeting report as amended:

- Hawaii Real Estate Research and Education Center Report
 Real Estate Seminars Recommend that HREREC provide REB staff
 with flyers advertising the real estate seminars to assist in the
 dissemination of information regarding the seminars to other interested
 parties.
- 2. Program of Work
 - a. Neighbor Island Outreach Kamuela, Hawaii
 The next neighbor island outreach program is scheduled for
 Wednesday, May 7, 1997, at the Lucy Enriques Medical

> Center Conference Room, located at 67-1123 Mamalahoa Highway, Kamuela, Hawaii. The meetings shall be convened as follows:

Laws and Rules Review Committee - 9:30 a.m.

Education Review Committee - 10:30 a.m. Condominium Review Committee - 1:30 p.m.

- b. Legislative and Government Participation Next legislative report at the April 25, 1997 Real Estate Commission Meeting.
- 3. Next Meeting: Wednesday, May 7, 1997

9:30 a.m.

Conference Room Lucy Henriques Medical Center 67-1123 Mamalahoa Highway

Kamuela, Hawaii

Legislative Report 97-6 was distributed to the Commissioners for their information. The SEO summarized the status of the bills affecting the Commission.

<u>Chapter 91, HRS,</u> Adjudicatory Matters:

The Chair called for a recess from the meeting at 9:55 a.m. to discuss_and deliberate on the following adjudicatory matters, pursuant to Chapter 91, HRS:

Debra S. Wohlschlegel dba Debra & Company Realtors; REC 95-241-L

Upon a motion by Commissioner Lee, seconded by Commissioner Imamura, it was voted on and unanimously carried to approve the Settlement Agreement Prior to Filing of Petition for Disciplinary Action and Commission's Final Order.

Henry James Correa, Jr., Rutkowski & Associates, Inc. and Larry A. Rutkowski; REC 93-152-L

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to approve the Settlement Agreement with Respondent Larry A. Rutkowski and Rutkowski & Associates, Inc. After Filing of Petition for Disciplinary Action and Commission's Final Order.

Marc Weinberg; REC-LIC-96-4

Upon a motion by Commissioner Ching, seconded by Commissioner Lee, it was voted on and unanimously carried to approve the Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order.

<u>Cuestionable</u>
Applications:

Jeffrey J. McKim

Jeffrey J. McKim was asked if he wished to have his application considered in executive session. Mr. McKim declined the offer.

A copy of a receipt from RICO acknowledging receipt of a money order for \$100, dated April 25, 1997, was distributed to the Commissioners for their information.

Mr. McKim stated that the original complaint that was filed with RICO involved product liability. Mr. McKim stated that he went back to the mainland and was never contacted by RICO. He stated that the person who represented the product was supposed to take care of the problem but he was never able to find the person. He stated that he felt that the complaint was unjustified. Mr. McKim stated that he found out about it in 1994 but he went back to the mainland. He did not find out about it until recently. He wants to start selling real estate. Mr. McKim stated that he will make the restitution payments on time and he would like to get his salesperson's license. He would like to practice real estate on the island of Kauai. He stated that the incident happened twelve years ago and it was unforeseen. Mr. McKim stated that he will pay off the debt and he would like to get his license. He is an honest, forthright individual. He stated that his family owns properties in the Princeville/Kilauea area. He would like to help sell the properties. Mr. McKim stated that he had gone to RICO to enter into a payment plan with them. He went to the mainland and was not sure if he would be returning to Hawaii. He felt that the whole thing was a product liability thing. He accepted responsibility in the end. He stated that the whole thing was done without his knowledge or consent. He felt that it was his responsibility because it was his license. Mr. McKim stated that the plaintiff was willing to accept a payment plan and that he would make his payments in a timely manner.

Mr. McKim was asked if he was aware of the payment plan when he went to the mainland. Mr. McKim answered in the affirmative. He stated that he was attempting to find the person who sold the chemical products. Mr. McKim stated that even if he had not returned to Hawaii, he would have tried to work out a payment plan.

Mr. McKim was asked why did not send the payments after he had moved to the mainland. Mr. McKim stated that he did not have much cash at that time. He went back to the mainland to try to find more money as it was very difficult on Kauai. Mr. McKim stated that he had lost his personal fortune and that his family lost money, too. They had lost a lot of equity since the hurricane.

Mr. McKim was asked if he had filed an appeal when he received notice of the action against his contractor's license. Mr. McKim stated that he was informed that it was too late. He stated that he was advised to go to the person who had the original product. He was never notified of the situation. When he checked in 1994, he found out about the Board's Final Order. He had not thought that there was any problem until then. He was trying to get his contractor's license when he found out about it. Since 1987 to 1994, he did not know about it. He was lacking funds to start the installment plan at that time, but he can afford it now. He stated that he will be paying \$100 per month.

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

Executive Session:

Upon a motion by Commissioner Ching, seconded by Commissioner Aki, it was voted on and unanimously carried to enter into executive session, pursuant to Section 92-5(a)(1), HRS, "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 Aki, seconded by Commissioner Lee, it was voted on and unanimously carried to move out of executive session.

<u>Licensing - Restoration</u> of Forfeited License:

Harriet H. Klark Broker

After a review of the information submitted by the applicant, Commissioner Ching moved that restoration be approved upon submitting evidence of successfully passing the real estate broker's licensing examination. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

<u>Licensing -</u> <u>Questionable</u> Applications:

Jeffrey J. McKim

After a review of the information presented by the applicant, Commissioner Imamura moved to deny the real estate salesperson's license application of Jeffrey J. McKim, pursuant to §§ 467-8(3), and 436B-19(1), (8), (11), (12) and (13), HRS. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Gary R. Fischer

After a review of the information submitted by the applicant, Commissioner Ching moved to approve the real estate salesperson's license application of Gary R. Fischer. Commissioner Imamura seconded the motion. The motion was voted on and unanimously carried.

David S. Silverman

After a review of the information submitted by the applicant, Commissioner Aki moved to approve the real estate salesperson's license application of David S. Silverman. Commissioner Kuriyama seconded the motion. The motion was voted on and unanimously carried.

Patricia L. Tiner, Pat Tiner Real Estate

After a review of the information presented by the applicant, Commissioner Kuriyama moved to approve the real estate sole proprietor application of Patricia L. Tiner, Pat Tiner Real Estate. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Elizabeth A. Herszage

After a review of the information submitted by the applicant, Commissioner Lee moved to approve the real estate sole proprietor application of Elizabeth A. Herszage. Commissioner Ching seconded the motion. The motion was voted on and unanimously carried.

Kahana Falls Limited Partnership

After a review of the information submitted by the applicant, Commissioner Lee moved to approve the real estate partnership application of Kahana Falls Limited Partnership. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Gracelyn J. Devega

After a review of the information submitted by the applicant, Commissioner Lee moved to deny Gracelyn J. Devega's request for an equivalency to the ten Hawaii written real estate transactions, of which three are closed listings, based on §16-99-38(a)(2)(A), HAR. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Robert L. Bentley

After a review of the information presented by the applicant, Commissioner Ching moved to deny Robert L. Bentley's request for reconsideration and his real estate salesperson's license application unless within 60 days he submits proof of payment of written payment plan for his outstanding IRS tax obligations. Commissioner Aki seconded the motion. The motion was voted on and unanimously carried.

Next Meeting:	Friday, May 23, 1997

9:00 a.m.

Kapuaiwa RoomHRH Princess Victoria Kamamalu Building

1010 Richards Street, Second Floor

Honolulu, Hawaii

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 11:02

a.m.

Reviewed and approved by:

/s/ Christine Rutkowski

Christine Rutkowski, Executive Officer

June 27, 1997 Date