



BULLETIN

<http://www.hawaii.gov/hirec>

November 2009

DUPLICATE CONTINUING EDUCATION HOURS

Hawaii Administrative Rules, Section 16-99-95 "Duplicate continuing education hours. Except as provided by the commission or by this subchapter, a licensee shall not take a continuing education course that is substantially similar to a course for which the licensee has already received a certificate. A continuing education provider shall not issue to a licensee a certificate for substantially the same course completed by the licensee. "Substantially similar" as used in this section means that at minimum, seventy-five percent of the course content of a course is repeated in another course offering."

The Continuing Education Online System holds continuing education records back to 1995. Any course a licensee took for continuing education credit from 1995 forward is in the database. The licensee will no longer be able to register for the same continuing education course and receive credit for the course. The same course may be taken but NOT for continuing education credit.

Each licensee may check their own continuing education history by going to the Commission's website at www.hawaii.gov/hirec, click on "Online Real Estate Continuing Education" in the right hand column, and click on "My CE Status". The licensee's real estate license number and the last four digits of the licensee's social security number are needed to log in. Prior to registering for a continuing education course, check your continuing education history first.

The continuing education provider is responsible for overseeing the licensees registered for a particular course offered. The Online CE System will not permit a licensee to register for a course he or she previously completed. This will be evident when the CE Provider adds the licensee's name to the course roster.

The intent of requiring continuing education for real estate licensees as a prerequisite to renewing their license is to improve the professionalism of the licensee in his or her dealings with the consumer. There are many licensees who continually take the same course over and over again, biennium after biennium. This behavior does not reflect the intent of continuing education.

CONTINUING EDUCATION CORE COURSE PART A

The Commission's mandatory core course, Part A, will be available in a live-classroom format only until December 31, 2009. On January 1, 2010, the core course, Part A, will only be available in an online format! If you prefer live-classroom education, sign up for the core course Part A, NOW!

Part B of the 2009-2010 core course is targeted for offering June 2010. Like Part A, Part B will be offered in a live-classroom format until December 31, 2010. On January 1, 2011, Part B will only be available in an online format. Licensees may take both Part A and Part B of the 2009-2010 core course, online, through May 31, 2010.

IMPORTANT CHANGES TO HAWAII TAX DEADLINES AND REMITTANCES

by the Hawaii Department of Taxation

During the 2009 legislative session, there were several important changes to Hawaii tax laws impacting real estate licensees. Senate Bill 1461, S.D. 2, H.D. 1, C.D. 2, which became law without Governor Linda Lingle's signature as Act 196, was one of them.

Act 196 amends various provisions relating to deadlines and methods of payment.

Advanced filing and payment deadline for general excise taxes

Act 196 amends the GET deadlines delineated in section 237-30, HRS. Prior to the amendment, taxpayers were required to file GET returns and pay their GET liability on the last day of the calendar month following the end of the reporting period, whether the reporting period was monthly, quarterly, or semi-annually. Act 196 advances the deadline for filing GET returns and paying the GET due to the 20th day of the calendar month following the end of the reporting period.

continued on page 2

IMPORTANT CHANGES TO HAWAII TAX DEADLINES AND REMITTANCES

EXAMPLES FOR ADVANCED FILING DEADLINE:

1. January return (monthly filer)
 - Return and payment due February 20
2. Quarter ending March 31 (quarterly filer)
 - Return and payment due April 20
3. 6-month period ending June 30 (semi-annual filer)
 - Return and payment due July 20

The Department of Taxation will provide a transition period to allow taxpayers to implement the necessary changes to meet the advanced filing deadline. No penalties or interest will be imposed on taxpayers who file their GET returns and pay any GET due after the 20th day but on or before the last day of the calendar month following the end of the reporting period for all reporting periods ending on or before December 31, 2009.

For instance, no penalty or interest will be imposed with respect to GET for the period (month, quarter, or semi-annual) ending December 31, 2009 if the GET return is filed and the tax is paid on or before January 31, 2010; but a penalty will be imposed if the taxpayer files the return and pays the tax after January 31, 2010.

Penalties and interest will be imposed on taxpayers who fail to file their GET returns and pay any GET due on or before the 20th day of the calendar month following the end of the reporting period for reporting periods ending after December 31, 2009.

Expanded application of semi-weekly deposit schedule for state taxes withheld

Act 196 also amends section 235-62, HRS, by authorizing the Director of Taxation to require any employer who is required to deposit federal withholding taxes using the Internal Revenue Service's semi-weekly deposit schedule, to also pay state income taxes withheld on the same deposit schedule. Generally, employers that are "semi-weekly schedule depositors" must deposit amounts withheld within 3 banking days as scheduled by the Internal Revenue Service (the "3-day Schedule").

The Director of Taxation may exempt any employer from the 3-day Schedule for state withholding taxes for good cause. Prior to Act 196, only employers whose annual state withholding tax liability exceeded \$40,000 were required to remit amounts withheld using the 3-day Schedule used by semi-weekly depositors.

Under the 3-day Schedule, deposits of state (and federal) withholding taxes must be made as follows:

IF the payday falls on a -	THEN deposit state withholding taxes on or before the following:
Wednesday, Thursday & Friday	Wednesday
Saturday, Sunday, Monday, and/or Tuesday	Friday

Act 196 further allows the Director of Taxation to expand the universe of taxpayers required to pay the Hawaii withholding tax using the 3-day Schedule. Pursuant to the provisions of section 235-62, HRS, as amended, employers who are required to deposit federal income taxes withheld using the Internal Revenue Service's semi-weekly deposit schedule shall remit state income taxes withheld to the Department using the 3-day Schedule, effective with respect to wages paid on or after January 1, 2010.

Employers who are currently required to pay state withholding taxes using the 3-day Schedule must continue to report and pay on that basis. An employer may request an exemption from using the 3-day Schedule for good cause.

All taxpayers who are required to pay Hawaii withholding taxes using the 3-day Schedule pursuant to the above will be required to pay the withholding taxes electronically, as further explained below.

E-filing and payment by electronic funds transfer ("EFT")

Lastly, Act 196 authorizes the Director to require any person who is required to electronically file a federal return or electronically pay any federal taxes to the federal government, to electronically file a state return and/or electronically pay any state taxes due to the Department of Taxation.

Pursuant to the new provisions, employers who are required to pay federal withholding taxes by EFT, will be required to pay state withholding taxes by EFT, effective with respect to wages paid on or after January 1, 2010. Employers who are currently required to pay state withholding taxes by EFT must continue to do so.

For more information regarding the information in this article, please see Department of Taxation Announcement No. 2009-11 or call the Department of Taxation at 587-1577.

The Chair's Message

Aloha,

The Administrative Actions section of the Real Estate Commission's quarterly Real Estate Bulletin is probably the first section turned to when you read the bulletin. It's interesting to see who did what and what disciplinary sanctions were imposed because of what occurred. It can be shocking and mind-blowing, too. There are lessons to be learned when reading these cases. This issue includes many administrative actions approved by the Commission. Read them as cautionary tales.



Trudy Nishihara

The Regulated Industries Complaints Office (RICO) is the complaints investigation and enforcement agency for the Department of Commerce and Consumer Affairs. RICO receives, investigates and prosecutes complaints against real estate licensees for violation(s) of laws and rules. The case may end up in a settlement agreement or it may result in disciplinary action against the respondent(s)' license(s), or the respondents may receive a warning letter, or the case may be closed for different reasons. The settlement agreement and disciplinary action cases are reviewed by the Commission. The Commission may approve, deny, defer, or in some instances, amend the action being reviewed.

Complaints have fluctuated over the past ten years with a 57% increase in 2009. RICO received 168 real estate complaints in FY 2009, compared to 107 in FY 2008. The Commission took disciplinary action against 22 licensees in FY 2009, a 40.5% decrease from 2008. Fines totaling \$65,500 were collected from 18 licensees, a decrease of 47.1% from last fiscal year. Nine licensees had their license revoked and six licenses were suspended.

The top four violations under Hawaii Revised Statutes, Chapter 467, Real Estate Brokers and Salespersons, are:

- 1) HRS section 467-14(20) – Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing.
- 2) HRS section 467-14(8) – Conduct constituting fraudulent or dishonest dealings.
- 3) HRS section 467-20 – False statements, misstatement of fact, or contains forgery.
- 4) HRS section 467-14(13) – Violating this chapter, chapters 484, 514A, 514B, 514E, or 515,

section 516-71, or the rules adopted pursuant thereto.

The top violations under Hawaii Administrative Rules, Chapter 99, are:

- 1) HAR section 16-99-3(b) - Licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field.
- 2) HAR section 16-99-4(l) – Information about escrow accounts and records for real estate transactions under the real estate brokerage firm shall be retained for at least 3 years, subject to inspection by the commission at the place of business.

The largest amount of complaint allegations are filed against principal brokers (PBs) under HRS section 467-1.6. Principal brokers have the ultimate responsibility of maintaining the firm's records, contracts, accounts, and accounting, ensuring that all licensees are current and active, developing policies and procedures for the firm, setting policy on CE requirements, establishing and maintaining a training program for both licensees and staff, and ensuring that all licensees are current with the latest amendments to real estate licensing laws and rules.

The Internet has created additional demands on the licensee and his or her responsibilities to clients and customers. Agency, the relationship issue of representation, including confidentiality of information, and the expectation of that representation is constantly tested on the websites and on social networking sites. Advertising on social networking sites such as Facebook and Twitter are also being examined.

Chair Louis Abrams, Kauai Commissioner, and Vice-Chair Frances Gendrano, Oahu Commissioner, of the Laws and Rules Review Committee, and Chair Carol Ball, Maui Commissioner and Vice-Chair Annette Aiona, Hawaii Commissioner, of the Education Review Committee, are working with the Hawaii Association of REALTORS' (HAR) legislative task force to increase CE hours and initiate fingerprinting and background checks on new real estate license applicants. A HAR survey revealed that more education is needed to improve the professional standards of the industry.

Contact the Real Estate Branch with questions or for more information on the above at email hirc@dcca.hawaii.gov, telephone (808)-586-2643, or at 335 Merchant Street, Room 333, Honolulu, HI 96813.

General RICO information is available at www.hawaii.gov/dcca/rico. Prior complaints information is available at www.ehawaii.gov/dcca/cms.



Does your business involve "cash" transactions?

In July 2009, the Department of Taxation formed the Special Enforcement Section (SES), which is charged with carrying out complex civil enforcement efforts of Hawaii's tax laws.

The highest priority of the SES is to ensure that all Hawaii taxpayers pay their fair share and to prevent the shortchanging of those who comply with tax laws.

Hawaii law authorizes the SES to enforce Hawaii tax laws through the issuance of cease and desist citations, which can include **substantial monetary fines**.



Failure to:

1. Produce license upon demand

2. Obtain a GE license

3. Keep adequate books and records

4. Record transaction by receipt

It is unlawful to conduct more than **10 business transactions per day** without a receipt.

5. Record transaction by register

It is unlawful to conduct more than **10 business transactions per day** without recording the transaction in the register.

6. Tax avoidance price fixing

Persons who offer price differentials where the transaction is paid in cash may violate the offense of tax avoidance price fixing.

7. Possession of currency for tax avoidance purposes

Where a person possesses cash for the purpose of avoiding taxes, the violation of possession of currency for tax avoidance purposes occurs.

8. Interference with a tax official

A violation of this provision

results in a fine not to exceed:

1. **\$500** for most persons
\$1,000 for cash-based businesses

2. **\$500** for most persons
\$2,000 for cash-based businesses

3. **\$1,000** for most persons
\$2,000 for cash-based businesses

4. **\$1,000** for most persons
\$2,000 for cash-based businesses

5. **\$1,000** for most persons
\$2,000 for cash-based businesses

6. **\$2,000** for most persons
\$3,000 for cash-based businesses

7. **\$2,000** for most persons
\$3,000 for cash-based businesses

8. **\$2,000**

For more information, please visit www.hawaii.gov/tax

Administrative Actions

Phillip G. Kuchler, Inc. dba Kuchler & Company and Phillip G. Kuchler - REC 2002-116-L and REC 2003-109-L

RICO filed a Petition for Disciplinary Action against the Respondents on November 5, 2005 alleging that respondents failed to timely provide accurate accounting for monies spent on properties Respondents managed for two separate complainants.

Respondent Phillip G. Kuchler, Inc., dba Kuchler and Company (referred to as Respondent KC) was licensed as a real estate broker on May 31, 1991. Respondent KC's real estate broker's license is scheduled to expire on December 31, 2010. Phillip G. Kuchler's (referred to as Respondent Kuchler) license was issued on October 20, 1989 and is scheduled to expire on December 31, 2010.

In the Third Amended Settlement Agreement after Filing of Petition for Disciplinary Action and Commission's Final Order with the respondents, allegations of violating HRS 467-14 (1) (Making any misrepresentation concerning any real estate transaction) (2) (Making any false promises concerning any real estate transaction of a character likely to mislead another) (3) (Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise) (7) (Failing, within a reasonable time, to account for any moneys belong to others that may be in the possession or under the control of the license) (8) (Any other conduct constituting fraudulent or dishonest dealings;) (15) (Commingle the money or other property of the licensee's principal with the licensee's own) (16) (Converting other people's money to the licensee's own use) (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings;) and HAR 16-99-3 (b) (failure to eliminate practices damaging to the dignity and integrity of the profession.)

The respondents entered into a Settlement Agreement as a compromise of the claims and to conserve on any possible administrative expenses that would be charged regarding this matter. It is the belief of the respondents that no violation of law or rule occurred, however they acknowledge that RICO must have had probable cause to file the Petition for Disciplinary action.

The terms of the settlement agreed upon by the respondents stipulate that the respondents' licenses be suspended for a period of ninety days and Respondent Kuchler successfully complete education courses including but not limited to accounting principals, professional responsibility and ethics determined by the board. In addition, the respondents are required to pay an administrative fine of \$1,000 to the DCCA Compliance Resolution Fund and restitution of \$1,000 to Cheyenne Tacket and \$2,000 to Mei-Ban Lo.

The Commission accepted the Third Amended Settlement Agreement after Filing of Petition for Disciplinary Action and Commission's Final Order on April 24, 2009.

Maui Real Estate Company, Inc. and Karl F. Lingenfelder - REC-2006-258-L

Maui Real Estate Company Inc. (MREC) is a foreign for profit entity incorporated in the State of Delaware. MREC was registered in the State of Hawaii to conduct business on October 24, 2002 and was later licensed as a real estate broker on January 1, 2003. MREC's principal broker is Karl F. Lingenfelder ("Lingenfelder"), who was licensed as a real estate broker on May 24, 1996. MREC also employed licensed real estate salesperson Lou Ann Bianchi for the period of December 22, 2003 to May 26, 2006.

On June 25, 2008, the Department of Commerce and Consumer Affairs (DCCA) through RICO by its attorney (John T. Hassler, Esq.) filed a petition for disciplinary action against the real estate brokers' licenses of MREC and its principal broker Lingenfelder. The allegations against MREC and its principal broker Lingenfelder were failure to account for funds or property as well as failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings.

On December 15, 2008, after several unsuccessful attempts to contact respondents via mail, RICO was granted permission to serve notice of hearing by publication. On February 10, 2009 the hearing was held and the Respondents failed to appear either in person or by representation.

A review of following activities and evidence regarding the Respondents actions was presented at the hearing:

On August 1, 2002, Respondent Lingenfelder filed for Chapter 7 Bankruptcy in the United States Bankruptcy Court for the District of Hawaii. His case was later contested on May 9, 2003 when the United States Trustee filed a Complaint to Deny Discharge against Lingenfelder in Adversarial Proceeding No. 03-90021 ("Adversarial Proceeding"). The complaint filed in Adversarial Proceeding included among other things the following two counts:

a. Respondent Lingenfelder transferred, removed, destroyed, mutilated or concealed his property of the property of his estate with the intent to hinder, delay, or defraud creditors and the Chapter 7 Trustee, in violation of section 727(a)(2) of the bankruptcy code.

b. Respondent Lingenfelder, without justification, concealed, destroyed, mutilated, falsified, or failed to keep or preserve recorded information from which his financial condition or business transactions might be ascertained, in violation of section 727(a)(3) of the Bankruptcy Code.

The motion for summary judgment regarding the Adversarial Proceeding was filed on February 4, 2004 and it was later granted in an order by the court on March 18, 2004. Following the order granted in March, the Bankruptcy court denied Lingenfelder a Discharge of debt on April 7, 2004. Lingenfelder's

continued on next page

Administrative Actions

case was dismissed with prejudice from Bankruptcy Court on February 23, 2007 and he was not granted his request to discharge debt.

On May 26, 2006, Lingenfelder's license was suspended for two years due to a Commission Final Order issued in regards to REC 2001-33-L. As a result of Lingenfelder's license suspension, MREC's real estate broker's license was placed on involuntary inactive status as of May 26, 2006.

On May 31, 2006, MREC received from Hawaii Escrow and Title, Inc. a check for the sale of property located on Pihaa Street. Licensed real estate salesperson Lou Ann Bianchi represented the buyers in the sale of property. The total commission from the Pihaa Street transaction totaled \$62,850.00. Bianchi's compensation for the sale was eighty percent of the total commission received (\$50,280.00.)

On June 7, 2006 Respondent Lingenfelder issued a check to Bianchi for her commission knowing that there were insufficient funds to negotiate the check. Bianchi attempted to process the check but it was returned insufficient funds. Despite numerous assurances from Respondent Lingenfelder that he would pay, Bianchi was never paid her commission. Respondent Lingenfelder instead left the state of Hawaii.

On June 6, 2007 the State of Hawaii Department of Taxation recorded a Certificate of State Tax Lien in the amount of \$2,017.96 on Respondent Lingenfelder. This was due to Lingenfelder's failure to file his state income tax returns for 2003 and 2004. This lien is still unpaid by the respondent.

After a review of the evidence presented above, it was concluded that the Respondents had violated HRS 467-14 (7) (Failing, within a reasonable time, to account for any moneys belong to others that may be in the possession or under the control of the license), 467-14(16) (Converting other people's money to the licensee's own use) and 467-14 (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings).

Respondents were also charged with violating HRS 436B-19 (8) (Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity), however after a review it was determined based on HRS 436B-3 which states "provisions of this chapter shall only be applicable to the professions and vocations required by law to be regulated by the licensing authority." It was determined that the issue was addressed in HRS 467-14 (20). As such, the charge with violating HRS 436B-19 was found to be inapplicable in this case.

Accordingly, the Respondents real estate brokers' licenses were revoked and Respondents are required to submit immediately all real estate indicia of licensure to the Executive Officer of the Commission. In addition, the Commission has ordered the respondents to pay \$15,000 to the State of Hawaii Compliance Resolution Fund and restitution of \$50,280.00 to Lou Ann Bianchi within sixty days (60) of the Commission's Final Order.

On May 29, 2009 a Commission's Final Order in regards to REC-2006-258-L was issued. The Commission's Final Order adopted and approved the Hearings Officer's Recommended Decision and concludes that the Respondents were in violation of Hawaii Revised Statutes.

Neal S Suda - REC 2007-45-L

On September 3, 2004, Respondent Suda was convicted of driving under the influence of an intoxicant. As a result of the 2004 conviction, Respondent Suda entered into a settlement agreement (designated as case no. REC 2005-27-L) in which he admitted that his conviction constituted a violation of HRS 436B-19 (14) (Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions or duties of the licensed profession or vocation). The 2004 agreement imposed a \$2,000 fine and was approved by the Commission on August 26, 2005.

On June 21, 2006 Respondent Suda had a Judgment and Notice of Entry of Judgment entered against him in the District Court of the Second Circuit, State of Hawaii. The Judgment found the respondent guilty of (1) the crime of driving under the influence of an intoxicant and (2) the crime of driving while his license was suspended or revoked for operating a vehicle under the influence of an intoxicant. As a result of the 2006 conviction, respondent served jail time, had his driver's license revoked or suspended, underwent a substance abuse assessment, and attended alcoholic anonymous meetings.

On November 14, 2006 Respondent disclosed the 2006 judgment in writing to the Commission in his license renewal application. During the investigation it was discovered that the Respondent was convicted of driving under the influence of an intoxicant in 1999. In addition, the Respondent was also convicted in 2007 of driving a motor vehicle without a valid driver's license and without motor vehicle insurance.

On August 14, 2007, the Department of Commerce and Consumer Affairs (DCCA) through RICO filed a petition for disciplinary action against Respondent Suda's real estate salespersons license.

Accordingly, Respondent Suda's real estate salesperson's license is revoked and respondent is required to submit immediately all indicia of licensure as a real estate salesperson in the State of Hawaii. Neal S. Suda was licensed as a real estate salesperson in Hawaii on October 15, 1992.

On May 29, 2009 the Commission issued a Final Order concluding that the respondent was guilty of violating HRS 436B-19 (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 unfit or improper person to hold a license;) (14) (Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions or duties of

continued on next page

Administrative Actions

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

Douglas T. Nonaka - REC 2008-109-L

Respondent Nonaka was issued a real estate broker's license on February 21, 1991.

In July 2005, Respondent Nonaka entered into a plea agreement with the Department of the Attorney General in State v. Douglas Nonaka (Cr. No. 03-1-2561). Wherein Respondent Nonaka was accused of selling unregistered securities (promissory notes) of 21st Century Satellite Communications Inc. In a written plea signed by the respondent on August 11, 2005, Nonaka admitted to selling the unregistered securities to clients and associates on four occasions. Licensed on April 7, 1978 as a CPA (Certified Public Accountant), Respondent Nonaka acknowledged he was not registered to sell securities. Consequently, Respondent Nonaka pleaded guilty to the Class B felonies admitting to making untrue statements and agreed to pay \$1,087,500.00 in restitution. On October 3, 2007 Respondent Nonaka was found guilty of the charges of Sale of Unregistered Securities, Sale of Securities by an Unregistered person and participating in four counts of Prohibited Securities Practices, all Class B felonies.

On May 28, 2008 the Department of Commerce and Consumer Affairs (DCCA) through RICO filed a Petition for Disciplinary Action against the real estate broker's license of Respondent Douglas Nonaka. RICO charged the Respondent with violating HRS 467-14 (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings), 467-14 (8) (Any other conduct constituting fraudulent or dishonest dealings) and 436B-19 (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).

On June 26, 2008, RICO filed a Motion for Summary Judgment. The motion hearing was set for July 31, 2008 with a pre-hearing conference scheduled for July 21, 2008. A merits meeting was also scheduled for August 21, 2008.

On July 2, 2008, Respondent filed a request that pre-hearing be rescheduled to mid November 2008 and that the motion's hearing and merit's meeting also be postponed. On July 9, 2008, in response to the Respondent's request, RICO objected. However, in order to allow the Respondent the ability to present evidence, RICO stated it would not object to scheduling the motion for summary judgment hearing in November 2008.

On July 16, 2008, the Hearings Officer granted the Respondent's request, rescheduling the pre-hearing conference to October 20, 2008, the Motion's hearing to November 18, 2008 and the merits hearing on December 11, 2008.

On November 18, 2008, the Motion's hearing

was held and Respondent Nonaka appeared in court pro se. At the hearing, RICO's attorney John Hassler stated that paragraph 6 of the petition be dismissed and waived because Respondent was convicted on October 3, 2007 and not at the time of his license renewal in 2005. Taking this information into advisement, Respondent Nonaka was instructed to advise the Hearings officer and Petitioner (RICO) by December 9, 2008 if the merits hearing of December 11, 2008 was still necessary. Respondent believed that he had presented all evidence at the Motion's hearing in November. No response was received from respondent; hence the merits meeting of December 11, 2008 was cancelled.

On April 15, 2009, the Hearings Officer submitted to the Commission the Proposed Findings of Fact, Conclusion of Law and Recommended Order in regards to disciplinary action against the real estate broker's license of the respondent. Upon review of the evidence presented, the Commission issued a final order on May 29, 2009 adopting the Hearing Officer's recommendation stating the Respondent did violate Hawaii Revised Statutes 467-14 (20), 467-14 (8) and 436B-19 (12). Accordingly, the Final Order granted RICO's Motion for Summary Judgment and ordered the Respondent's license be revoked.

Wilton I. Lombard - REC 2008-132-L

Respondent Wilton Lombard was licensed as a real estate salesperson licensed by the Commission on April 25, 2007. Respondent Lombard's license was scheduled to expire last December 31, 2008.

A civil dispute (Civil no. 1RC07-1-7664) between Respondent Wilton Lombard and Sterling's Carpet Inc (aka Carpet Liquidators of Hawaii) resulted in a judgment against Lombard. Sterling's Carpet Inc was awarded payment in the amount of \$2,819.93 on February 11, 2008. Respondent Lombard refused to pay this amount and instead attempted to negotiate a settlement with Sterling's Carpet. Obligated to report this item under HRS 436B-16, Respondent Lombard failed to inform the Commission within thirty (30) days from the date of the judgment.

On June 17, 2008, the Department of Commerce and Consumer Affairs (DCCA) through its Regulated Industries Complaints Office (RICO) filed a Petition for Disciplinary Action against the real estate salesperson's license of Wilton Lombard. RICO charged the respondent with violating HRS 467-14 (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealings), and 436B-16 Notice of Judgments, penalties (a) (Each licensee shall provide written notice within thirty days to the licensing authority of any judgment, award, disciplinary sanction, order, or other determination, which adjudges or finds that the licensee is civilly, criminally, or otherwise liable for any personal injury, property damage, or loss caused by the licensee's conduct in the practice of the licensee's

continued on next page

Administrative Actions

profession or vocation. A licensee shall also give notice of such determinations made in other jurisdictions). RICO alleged that the Respondent was found civilly liable for a loss caused by his conduct and that he did not report this judgment to the commission within 30 days.

On December 15, 2008, the Hearings Officer submitted to the Commission the Findings of Fact, Conclusions of Law and Recommended Order. The Hearings Officer concluded that Respondent Lombard violated HRS 467-14 (20) and 436B-16. The recommendation was that the respondent pay a fine in the amount of \$200.00 to the DCCA Compliance Resolution Fund within sixty (60) days of the Commission's Final Order and pay the judgment amount of \$2,819.93 to Sterling's Carpet Inc. within ninety days (90) days of the Commission's Final Order. If Respondent fails to pay the administrative fine and judgment the license of the Respondent be suspended until the Commission has been notified he has complied.

On December 30, 2008, RICO filed Exceptions to the Recommended Order and requested oral argument.

On February 27, 2008, the Commission considered this matter. RICO presented its oral argument and Respondent Lombard did not appear. Upon review of these findings, the Commission found the respondent guilty of violating HRS 467-14 (20) and 436B-16 and granted RICO's Motion for Summary Judgment.

On March 11, 2009, the Commission modified the Hearings Officer's recommended sanctions to the following: Respondent shall pay a fine of \$2,000.00 to the DCCA Compliance Resolution Fund within thirty (30) days of Commission's Final Order. Respondent shall pay the judgment in the amount of \$2,819.93 to Sterling Carpet Inc. within 30 days of Commission's Final Order and notify Patrick K. Kelly Esq. (RICO's attorney) in writing of payment. If Respondent fails to pay the administrative fine and judgment, his real estate salesperson license will be suspended without further administrative hearing. Reinstatement of the suspended license would be subject to payment of fine and judgment and Respondent shall be required to meet all applicable licensing requirements. In addition, if Respondent fails to abide by any term of the Commission's Final Order, the Commission at its discretion may pursue additional disciplinary action as provided by HRS 92-17 (Consumer complaints; procedures and remedies) and any other applicable law to include further fines and other sanctions as the commission may deem appropriate.

The Final Order was approved by the Commission on May 29, 2009.

Jonna Robin Wickesser-Zenchak - REC 2009-127-L

On July 1, 2008, Respondent Jonna Robin Wickesser-Zenchak entered into a settlement agreement with RICO prior to the filing of Petition for Disciplinary Action and Commission's Final

order.

Respondent Wickesser-Zenchak was licensed by the Real Estate commission as a real estate salesperson on January 28, 1976. Respondent Wickesser-Zenchak's license is scheduled to expire on December 31, 2010.

RICO's alleges that Respondent Wickesser-Zenchak was convicted of driving under the influence of an intoxicant. This conviction, if proven at an administrative hearing, constitutes a violation of HRS 436B-19 (14) (Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions or duties of the licensed profession or vocation).

In order to conserve on the cost of expenses and possibly compromise on the charges, Respondent Wickesser-Zenchak entered into this settlement agreement with RICO. By participating in this agreement, Respondent acknowledges RICO has sufficient cause to file a petition for disciplinary action against respondent's license. However, respondent is not admitting to any violation law or rule.

The terms of the Settlement Agreement was payment of an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund upon Commission's approval. In addition, if the Respondent fails to abide by the terms of the settlement agreement; the commission could impose further disciplinary action as provided by law to include additional fines and other sanctions.

Respondent was aware that this information becomes public record pursuant to Hawaii Revised Statutes 92F. The Settlement Agreement was accepted and approved by the Commission on July 31, 2009.

Metropolitan Management, Inc. and Ralph N. Ahles - REC 2006-256-L

Metropolitan Management, Inc. is a real estate management company licensed as a real estate broker on March 11, 2002. Ralph N. Ahles is assigned as the principal broker of the company.

In 2006, Respondent Ahles and Metropolitan Management, Inc. were serving as the managing agent for the Association of Apartment Owners (AOAO) of Waiau Gardens Kai Unit G-1. About mid May of 2006, the AOAO of Waiau Gardens terminated their management contract via correspondence with Metropolitan Management. The new managing agent for the AOAO contacted Metropolitan Management, Inc. and Respondent Ahles twice requesting all records, files, documentation and funds. On both occasions, the materials were never sent.

On June 7, 2006, the AOAO filed a complaint for damages and for injunctive relief against Metropolitan Management, Inc. At the hearing held in June 2006, the judge ruled in favor of the AOAO's new management company and ordered Metropolitan Management Inc. to turnover the

continued on next page

Administrative Actions

turnover the records, files and bank accounts within 48 hours. Metropolitan Management, Inc. complied with the court's judgment.

In July 2009, Respondent Ahles entered into a Settlement Agreement prior to RICO's filing of Petition for Disciplinary Action and Commission Final Order. RICO had charged the respondent with negligence of fiduciary duty - a violation of HRS 514A-95 (c) (Every managing agent shall be considered a fiduciary with respect to any property managed by that managing agent).

RICO claims that if this allegation (violation of HRS 514A-95(c)) were proven at an administrative hearing, it would constitute a violation of HRS 467-14 (13) (violating chapter 514A, or the rules adopted pursuant thereto) HRS 436B-19 (7) (professional misconduct); HRS 436B-19 (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).

Respondent Ahles denied RICO allegations of fault or wrong doing. During the time of the request Metropolitan Management, Inc. was in dispute over the termination of their contract agreement. As an employee of Metropolitan Management, Respondent's position had no legal decision making authority. It was the legal opinion of Metropolitan's attorney not to comply with the new AOA's managing agent's request. Hence, Respondent Ahles explained that he did not act unilaterally with intent to cause harm or financial loss to the AOA, he was only following the instructions of his employer. In addition, Respondent Ahles stated that at no time during the period of dispute were the funds or records of the AOA in danger of being compromised.

As a voluntary compromise and to conserve on any possible administrative expenses that would be charged regarding this matter, Respondent Ahles entered into this Settlement Agreement. The terms of the Settlement Agreement state that the Respondent shall pay an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund. In the event the Respondent fails to pay, an automatic revocation of the Respondent's license will occur without hearing. In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission impose further disciplinary action as provided by law to include additional fines and other sanctions.

The Settlement Agreement was approved and adopted by the Commission on August 28, 2009.

Nemo Realty, Inc., Mikiko Malasek and Vojtech Malasek - REC 2004-92-L

Nemo Realty, Inc. is a real estate company licensed as real estate broker on July 12, 1989. Mikiko Malasek is a real estate broker licensed on January 1, 1987. Vojtech Malasek is a real estate broker licensed on March 2, 2004.

On April 6, 2009 RICO filed a Petition for

Disciplinary Action against the respondents. RICO alleged that in 2003 Respondents altered documents (purchase agreements and cooperating broker's separate agreements) naming Respondent Nemo Realty, Inc. and Mikiko Malasek as brokers in two real estate transactions.

RICO asserted that the Respondents falsified documents representing the buyers were not represented by an agent or broker and that the signatures on the purchase agreements were forged. In addition, Respondent Mikiko Malasek signed the Cooperating Broker's Separate Agreement on behalf of the buyers and falsely represented that the buyers were represented by Respondents Nemo Realty, Inc. and Mikiko Malasek. As a result two commission payments were issued in the amount of \$12,677.50 and \$15,386.25 to the respondents. These commission payments have not been returned.

The respondents are accused of violating HRS 467-14 (1) (Making any misrepresentation concerning any real estate transaction), HRS 467-14 (3) (Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise), HRS 467-14 (7) (Failing, within a reasonable time, to account for any moneys belonging to others that may be in the possession or under the control of the license), HRS 467-14 (8) (Any other conduct constituting fraudulent or dishonest dealings), HRS 467-14 (16) (Converting other people's money to the licensee's own use), HRS 467-14 (20) (Failure to maintain a reputation for or record of competency, honesty, truthfulness, financial integrity, and fair dealing), HRS 436B-19 (7) (Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation), HRS 436B-19 (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.)

On July 15, 2009, a partial settlement was offered by Edmund W. K. Haitsuka Esq. on behalf of Nemo Realty, Inc. and Mikiko Malasek. Respondent Vojtech Malasek was not included.

The Partial Settlement Agreement was entered into as a compromise of claims and to conserve on the costs that may arise from an administrative hearing. The Respondents admitted that they received two commission checks for real estate transactions totaling \$28,063.75 but deny any violation of rule or wrongdoing. The Respondents do however acknowledge that RICO had sufficient cause to file the petition and that pursuant to HRS 92F this Partial Settlement Agreement becomes public record.

According to the terms of the Partial Settlement Agreement, the respondents agree to voluntarily revoke their licenses and agree that they cannot apply for a new license for five years. If the Respondents choose to apply for a new license, the Respondent will need to qualify with the rules and regulations applicable at that time. In

continued on next page

Administrative Actions

addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission could impose further disciplinary action as provided by law to include additional fines and other sanctions.

The Partial Settlement Agreement was approved and adopted by the Commission on August 28, 2009.

Century 21 Realty Specialist Corporation dba Management Specialists Company (real estate broker) Rodney Y. S. Chai, JTU Inc., dba Century 21 Homefinders of Hawaii, Lou Ann Uyeda and Rebecca Hamili - REC 2007-131-L

Respondent Century 21 Specialists dba Management Specialists Company was licensed as a real estate broker on January 30, 1976. Respondent Rodney Chai, licensed on August 14, 1973 is the principal broker. Both respondent licenses are scheduled to expire on December 31, 2010.

Rebecca Hamili is a respondent, but not a party in this Settlement Agreement. Respondent Hamili was employed by Respondent Management Specialists and was assigned to do property management for the period of January 1, 2005 to January 31, 2006. Although Hamili was licensed as a real estate salesperson on September 5, 1996, her license became delinquent and in forfeiture status on January 1, 2005. Respondent Hamili's license was later restored on January 30, 2007, at which time her employment with Management Specialists Company was terminated.

On June 5, 2009, Respondents Management Specialists and Rodney Y.S. Chai entered into a Settlement Agreement with RICO prior to the filing of petition for disciplinary action and commission's final order. RICO was charging the respondents with violations of HRS 467-1.6 (b) (7) Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active and 467-14 (13) (Violating this chapter and/or the rules adopted pursuant thereto.)

Accordingly, the respondents do not admit to the RICO allegations and deny any wrongdoing or violation of the law. The Respondents entered into the Settlement Agreement as a compromise of claims and to conserve on the costs that may arise from an administrative hearing.

The terms of the Settlement Agreement require the respondent to pay an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund. In the event the respondent fails to pay, an automatic revocation of the respondent's license will occur without hearing. In addition, if the respondent fails to abide by the terms of the Settlement Agreement; the commission (at their discretion) could impose further disciplinary action as provided by law to include additional fines and other sanctions.

The following Settlement Agreement was approved and accepted by the Commission on August 28, 2009.

Century 21 Realty Specialists Corporation dba Management Specialist Company (real estate broker) Rodney Y.S. Chai, JTU Inc., dba Century 21 Homefinders of Hawaii, Lou Ann Uyeda and Rebecca Hamili - REC 2007-131-L

Respondent JTU Inc dba Century 21 Homefinders of Hawaii was licensed as a real estate broker on November 22, 1995. Respondent Lou Ann Uyeda, licensed on March 5, 1992 is the principal broker. Both respondent licenses are scheduled to expire on December 31, 2010.

Rebecca Hamili is a respondent, but not a party in this Settlement Agreement. Respondent Hamili was employed by Respondent Century 21 Homefinders of Hawaii and was assigned to do property management for the period of February 1, 2006 to November 2006. Although Hamili was licensed as a real estate salesperson on September 5, 1996, her license became delinquent and in forfeiture status on January 1, 2005. Respondent Hamili's license was later restored on January 30, 2007, at which time her employment with Century 21 Homefinders of Hawaii was terminated.

On May 20, 2009, Respondents Century 21 Homefinders of Hawaii and Lou Ann Uyeda entered into a Settlement Agreement with RICO prior to the filing of Petition for Disciplinary Action and commission's final order. RICO was charging the respondents with violations of HRS 467-1.6 (b) (7) (Ensuring that the licenses of all associated real estate licensees and the brokerage firm license are current and active) and 467-14 (13) (Violating this chapter and or the rules adopted pursuant thereto.)

Accordingly, the respondents do not admit to the RICO allegations and deny any wrongdoing or violation of the law. The Respondents entered into the Settlement Agreement as a compromise of claims and to conserve on the costs that may arise from an administrative hearing.

The terms of the Settlement Agreement require the respondent to pay an administrative fine of \$500.00 to the DCCA Compliance Resolution Fund. In the event the respondent fails to pay, an automatic revocation of the respondent's license will occur without hearing. In addition, if the respondent fails to abide by the terms of the Settlement Agreement; the commission (at their discretion) could impose further disciplinary action as provided by law to include additional fines and other sanctions.

The Settlement Agreement was approved and accepted by the Commission on August 28, 2009.

Century 21 Realty Specialists Corporation dba Management Specialist Company (real estate broker) Rodney Y.S. Chai, JTU Inc., dba Century 21 Homefinders of Hawaii, Lou Ann Uyeda and Rebecca Hamili - REC 2007-131-L

Respondent Rebecca Hamili was licensed as a real estate salesperson by the commission on September 5, 1996. Scheduled to expire on

continued on next page

Administrative Actions

December 31, 2010, the license became delinquent and in forfeiture status on January 1, 2005. It was two years later on January 30, 2007 that Respondent Hamili's license was restored.

During the period the respondent's license was in delinquent and forfeiture status (01/01/05 – 01/29/07), Respondent Hamili became employed by two management companies (Management Specialists on January 1, 2005 to January 31, 2006 and Century 21 Homefinders of Hawaii on February 1, 2006 to November 2006). At both companies the respondent was assigned to do property management activity.

On January 31, 2006, the principal broker of Management Specialist signed the Real Estate Change Form and released Respondent Hamili's license from affiliation with their brokerage firm. On February 1, 2006, the principal broker of Century 21 Homefinders of Hawaii signed the Real Estate Change Form indicating their company had retained Hamili. The real estate commission did not receive the Real Estate Change Form until a copy was submitted to RICO in May of 2007.

RICO asserts that the respondent violated HRS 436B-19 (1) (Failure to meet or maintain the conditions and requirements necessary to qualify for the granting of a license), HRS 467-7 (Licenses required to act as real estate broker and salesperson. No person within the purview of this chapter shall act as real estate broker or real estate salesperson without a license obtained under and in compliance with this chapter and the rules and regulations of the real estate commission), HRS 467-14 (13) (Violating this chapter and/or the rules promulgated thereto;) HAR 16-99-5 (e) (Any licensee whose

license has been forfeited, suspended, revoked or terminated shall immediately cease employment and shall return the licensee's wall certificate and identification card to the commission) and HAR 16-99-5 (d) (A principal broker or broker in charge shall release a license from employment or association within ten days upon written request. Any individual licensee who changes employing or associating brokerage firm shall notify the commission in writing on a form provided by the commission within ten days of the change, or immediately place the individual's license on inactive status.)

Respondent Hamili does not admit to the RICO allegations and denies any wrongdoing or violation of the law. The respondent entered into the settlement agreement as a compromise of claims and to conserve on the costs that may arise from an administrative hearing.

The terms of the Settlement Agreement are payment of an administrative fine of \$2,000.00 in two equal installments of \$1,000.00. The first payment shall be due thirty days after the approval of the Settlement Agreement. And the second payment will be due no later than thirty days after the due date of the first payment.

In the event the Respondent fails to pay, an automatic revocation of the Respondent's license will occur without hearing. In addition, if the Respondent fails to abide by the terms of the Settlement Agreement; the Commission could impose further disciplinary action as provided by law to include additional fines and other sanctions.

The Settlement Agreement was approved and accepted by the Commission on August 28, 2009.

2009 - 2010 REAL ESTATE COMMISSION MEETINGS

<p>Laws & Rules Review Committee – 9:00 a.m. Condominium Review Committee – Upon adjournment of the Laws & Rules Review Committee Meeting Education Review Committee – Upon adjournment of the Condominium Review Committee Meeting, which is upon the adjournment of the Laws & Rules Review Committee Meeting, which convenes at 9:00 a.m.</p>	<p style="text-align: center;">Real Estate Commission 9:00 a.m.</p>
Wednesday, November 4, 2009	Wednesday, November 25, 2009
Wednesday, December 9, 2009	Wednesday, December 18, 2009
Wednesday, January 13, 2009	Thursday, January 28, 2010
Wednesday, February 10, 2010	Friday, February 26, 2010
Wednesday, March 10, 2010	Thursday, March 25, 2010
Wednesday, April 7, 2010	Thursday, April 22, 2010
Wednesday, May 5, 2010	Friday, May 28, 2010
Wednesday, June 9, 2010	Thursday, June 24, 2010

All meetings will be held in the Queen Liliuokalani Conference Room of the King Kalakaua Building, 335 Merchant Street, First Floor.

Meeting dates, locations and times are subject to change without notice. Please visit the Commission's website at www.hawaii.gov/hirec or call the Real Estate Commission Office at (808) 586-2643 to confirm the dates, times and locations of the meetings. This material can be made available to individuals with special needs. Please contact the Executive Officer at (808) 586-2643 to submit your request.

REAL ESTATE LICENSES

Based on the October 7, 2009, Geographical Report, Department of Commerce and Consumer Affairs, Professional and Vocational Licensing Division, there are a total of 18,919 real estate licensees in the State. There are 16,230 individual licensees, 1,028 corporations and partnerships, 1,074 sole proprietorships, and 587 limited liability companies and partnerships.

There are 7,545 active real estate salespersons, and 5,033 inactive real estate salespersons. There are 5,581 active brokers, and 647 inactive brokers.

Here is a breakdown of licensees per island:

Oahu	11,212
Hawaii	2,439
Maui	2,854
Kauai	1,352
Molokai	52
Lanai	17

In comparison, in October 2008, there were 22,107 licensees in the State. This number included 19,244 individual licensees, 1,125 corporations and partnerships, 1,157 sole proprietorships, and 581 limited liability companies and partnerships.

A year ago, there were 8,907 active real estate salespersons, and 6,572 inactive real estate salespersons. There were 5,745 active brokers, and 740 inactive brokers.

The breakdown of licensees per island in 2008:

Oahu	12,858
Hawaii	2,918
Maui	3,458
Kauai	1,602
Molokai	54
Lanai	18

(Note: there were 1,167 "mainland", 32 "foreign" licensees included)

PERSONAL TRANSACTIONS ON THE INTERNET

As a Hawaii real estate licensee, using websites that you join for a fee to list your personal property for rent, lease, sale, or exchange may be a good way to attract potential clients. But, is it good for you in the overall sense?

Hawaii Administrative Rules, section 16-99-11(b) states, "No licensee shall advertise "For Sale by Owner," "For Rent by Owner," "For Lease by Owner," or "For Exchange by Owner."

It is clear that a licensee choosing to advertise his or her own property on these websites is advertising "For Rent by Owner," "For Lease by Owner," "For Lease by Owner," or "For Exchange by Owner." Strike one.

If you are a real estate licensee working under a broker, and advertising your own property on this type of website, are you running any resulting transactions through your broker? That's two strikes.

The third strike will be a complaint filed with the Regulated Industries Complaints Office (RICO), with the resulting disciplinary action taken against your real estate license, your principal broker's license, and your employing brokerage firm's license.

Disciplinary action may take the form of a fine, suspension, or revocation for all of the aforementioned licenses.