

TAMMY Y. KANESHIRO 6287
Regulated Industries Complaints Office
Department of Commerce and Consumer Affairs
State of Hawaii
Leiopapa A Kamehameha Building
235 South Beretania Street, Suite 900
Honolulu, Hawaii 96813
Telephone: 586-2660

DEPT. OF COMMERCE AND CONSUMER AFFAIRS
RECEIVED
PROF. & VOCATIONAL LICENSING DIVISION
2011 AUG 23 P 1:49
2011 AUG -1 P 12:50
DEPT. OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

Attorney for Department of Commerce
and Consumer Affairs

CONTRACTORS LICENSE BOARD
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Contractor's License of) CLB 2007-104-L and CLB 2010-165-L
)
MATTHEW R. HOUAR dba TROPICAL) SETTLEMENT AGREEMENT PRIOR TO
WHOLESALE,) FILING OF PETITION FOR DISCIPLINARY
) ACTION AND BOARD'S FINAL ORDER;
Respondent.) EXHIBITS "A" AND "B"
)
)

241092407

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

Petitioner, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS'

REGULATED INDUSTRIES COMPLAINTS OFFICE (hereinafter "RICO" or "Petitioner"),
through its undersigned attorney, and Respondent MATTHEW R. HOUAR dba TROPICAL
WHOLESALE (hereinafter "Respondent"), enter into this Settlement Agreement on the terms
and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent was licensed by the Contractors License
Board (hereinafter the "Board") as a general contractor under License Number BC 14660. The

license was issued on or about May 24, 1998. The license will expire on or about September 30, 2012.

2. Respondent's mailing address for purposes of this action is c/o Scott I. Batterman, Esq., 700 Bishop Street, #2100, Honolulu, Hawaii 96813.

3. RICO received a complaint alleging that Respondent performed poor workmanship on the residence of Joey Pascual and failed to complete his project.

4. RICO received a complaint alleging that Respondent failed to honor his warranty on a window installation project on the residence of Audrey Condon.

5. RICO alleges that Respondent failed to comply with chapter or rules, failed to provide required contract disclosures, and failed to include the requisite homeowner contract provisions.

6. RICO further alleges Respondent misrepresented a material fact on his 2008 renewal application when he responded "no" to question number 4 "Are there any liens or judgments against you?" as Respondent had a federal tax lien against him. See Exhibits "A" and "B" attached hereto.

7. RICO acknowledges that Respondent denies the allegations in paragraphs A.3., A.4., A.5., and A.6.

8. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") §§ 444-17(10) (misrepresentation of a material fact by an applicant), 444-17(12) (failure to comply with chapter or rules), 444-17(13) (failure to complete) and 444-25.5 (failure to provide required contract disclosures) and Hawaii Administrative Rules ("HAR") §§ 16-77-80 (failure to include homeowner contract provisions) and 16-77-97 (poor workmanship).

9. The Board has jurisdiction over the subject matter herein and over the parties hereto.

B. REPRESENTATIONS BY RESPONDENT:

1. Respondent enters into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

2. Respondent is aware of the right to have a hearing to adjudicate the issues in the cases. Pursuant to HRS § 91-9(d), Respondent freely, knowingly, and voluntarily waives the right to a hearing and agrees to dispose of these cases in accordance with the terms and conditions of this Settlement Agreement.

3. Respondent being at all times relevant herein licensed as a general contractor by the Board acknowledges that Respondent is subject to penalties including but not limited to, revocation, suspension or limitation of the license and administrative fines, if the foregoing allegations are proven at hearing.

4. Respondent disputes Mr. Pascual's and Ms. Condon's allegations, Respondent disputes the allegations regarding his 2008 renewal application and asserts that he reasonably believed that the tax lien was resolved prior to executing his 2008 renewal application, and Respondent does not admit to violating any law or rule, notwithstanding RICO's position that it has sufficient cause to file a Petition for Disciplinary Action against Respondent's license.

5. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on these matters.

6. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigations in RICO Nos. CLB 2007-104-L and CLB 2010-165-L.

7. Respondent understands this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of THREE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$3,500.00). Payment shall be made by **cashier's check or money order made payable to "DCCA - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Tammy Y. Kaneshiro, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. Payment of the fine shall be due at the time this fully executed Settlement Agreement is returned to RICO.

2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph(s) C.1 above, Respondent's license shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of the license to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondent understands Respondent cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondent understands that if Respondent desires to become licensed again, Respondent must apply to the Board for a new license pursuant to and subject to HRS §§ 92-17, 436B-21, and all other applicable laws and rules in effect at the time.

3. Possible further sanction. The Board, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Board may deem appropriate if Respondent violates any provision of the statutes or rules governing the

conduct of contractors in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

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

5. No Objection if Board Fails to Approve. If the Board does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither Respondent nor any attorney that Respondent may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondent on the basis that the Board has become disqualified to consider the cases because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

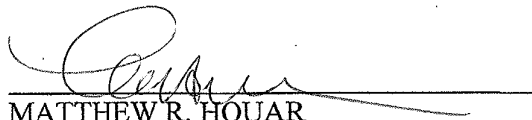
7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning

the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.


8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

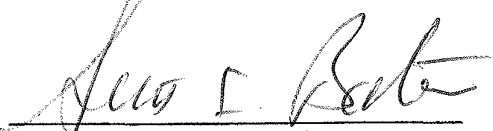
DATED: Honolulu, Hawaii, 7/26/11
(City) (State) (Date)


MATTHEW R. HOUAR
Respondent

DATED: Honolulu, Hawaii, 8 / 1 / 11



TAMMY Y. KANESHIRO
Attorney for Department of Commerce and
Consumer Affairs

APPROVED AS TO FORM:


SCOTT I. BATTERMAN
Attorney for Respondent

IN THE MATTER OF THE CONTRACTOR'S LICENSE OF MATTHEW R. HOVAR
DBA TROPICAL WHOLESALE; SETTLEMENT AGREEMENT PRIOR TO FILING OF
PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; CASE NOS.
CLB 2007-104-L AND CLB 2010-165-L


APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



F. M. SCOTTY ANDERSON
Chairperson

AUG 18 2011

DATE




NEAL ARITA - RANDALL B. C. LAU
Vice Chairperson



GUY M. AKASAKI



ERIC CARSON PETER LEE



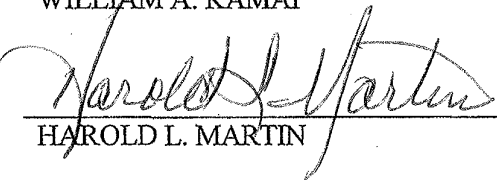
JOHN E. K. DILL



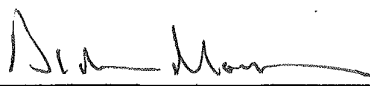
WILLIAM A. KAMAI



RANDALL B. C. LAU - ANACLETO ALCANTARA, JR.



HAROLD L. MARTIN



ALDON K. MOCHIDA



RONALD K. OSHIRO



DENNY R. SADOWSKI

DARYL SUEHIRO

GERALD YAMADA

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

On this 26th day of July, 20 11, before me personally appeared MATTHEW R HOUAR, to me known to be the person described, and who executed the foregoing instrument and acknowledged that he/she executed the same as his free act and deed.

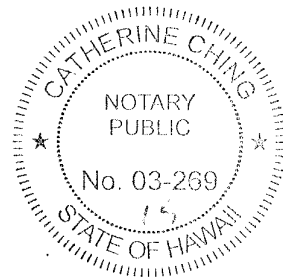
This 8-page SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER document dated July 26,

20 11 was acknowledged before me by MATTHEW R. HOUAR

this 26th day of July, 20 11, in the City and County of Honolulu, State of Hawaii.
FIRST CIRCUIT

Catherine Ching
Name: CATHERINE CHING
Notary Public, State of Hawaii

My Commission expires: May 18, 2015



I hereby certify that this is a true copy from the records of the Bureau of Conveyances.

Carl T. Watanabe
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

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C



R-849 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 02, 2007 03:00 PM
Doc No(s) 2007-020760



1st CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 11 29

kw

	After recordation return by mail <input checked="" type="checkbox"/> or pick-up <input type="checkbox"/> R/O GROUP 10 (HIS H-212) INTERNAL REVENUE SERVICE 300 ALA MOANA BLVD. #50089 HONOLULU, HI 96850-4992	Do not mark this area
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2007-02-02
EXHIBIT "A"

Form 668(Y)
(Rev. 10-1999)

Department of the Treasury - Internal Revenue Service

Notice of Federal Tax Lien

Small Business/Self Employed Area: 6

Serial Number
270701918

For Optional Use by Recording Office

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer
MATTHEW R HOUAR

Residence
6175 MAY WAY
HONOLULU, HI 96821-2338

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of lien is refilled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
6672	06/30/1996	REDACTED	01-23-1997	02-22-2007	\$234,650.95

Place of Filing
BUREAU OF CONVEYANCES
REGISTRAR
HONOLULU, HI 96803

Total

\$234,650.95

This notice was prepared and signed at HONOLULU, HI, on this, the 2nd day of February, 2007.

Signature
J. AU, Employee # - 99-00021

Title
Revenue Officer, Phone # - (808)530-1501

(NOTE: Certificate of officer authorized by law to take acknowledgements is not essential to the validity of Notice of Federal Tax Lien Rev. Rul. 71-468, 1971-2 C.B. 409)

Part 1 - Recording Office

Form 668(Y) (Rev. 10-1999)

I hereby certify that this is a true copy from the records of the Bureau of Conveyances.

Nick...
Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii



R-1009 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
FEB 16, 2007 02:00 PM
Doc No(s) 2007-030436



1st CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 212 29

After recordation return by mail or pick-up

R/O GROUP 10 (HIS H-212)
INTERNAL REVENUE SERVICE
300 ALA MOANA BLVD. #50089
HONOLULU, HI 96850-4992

Do not mark this area



RECEIVED
PROF & VOCATIONAL
LICENSE DIVISION
2011 AUG -9 11 A 9:25
DEPT. OF COMMERCE
& CONSUMER AFFAIRS
STATE OF HAWAII

2007 DEC -5 11:35

21/1E 2007

EXHIBIT "B"

Form **668(F)**
(Rev. 10-2004)

Department of the Treasury - Internal Revenue Service
NOTICE OF FEDERAL TAX LIEN
REFILE

Area:
Small Business/Self Employed Area: 6
Lien Unit Phone:
(800)913-8050

Serial Number Recorded
270701918

For Use by Recording Office

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, we are giving notice that taxes (including interest and penalties) have been assessed against the following named taxpayer. We have made demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer
MATTHEW R HOUAR

Residence
**6175 MAY WAY
HONOLULU, HI 96821-2338**

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
6672	06-30-1996	REDACTED	01-23-1997	02-22-2007	\$234,650.95

NOTICE OF FEDERAL TAX LIEN REILING

Serial Number: 345050207

Notice Filed at: **HONOLULU, HAWAII**

New Taxpayer Name: **MATTHEW R HOUAR**

New TIN: **REDACTED**

New Address: **8175 MAY WAY
HONOLULU, HI 96821-2338**

Signature: for J. AIU *J. AIU*

Date: **February 16, 2007**

Title: Revenue Officer

Place of Filing
**BUREAU OF CONVEYANCES
REGISTRAR
HONOLULU, HI 96803**

Total

\$234,650.95

This notice was prepared at **HONOLULU, HAWAII**, on this, the **16th** day of **February**, 2007.

Signature

J. AIU, *J. AIU*

Title

Revenue Officer

Form **668(F)** (Rev. 10-2004)