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Department of Commerce and Consumer Affairs
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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 Contractors' Licenses of) CLB 2011-85-L
)
LAHAINA CARPET & INTERIORS, INC.) SETTLEMENT AGREEMENT PRIOR TO
) FILING OF PETITION FOR DISCIPLINARY
and) ACTION AND BOARD'S FINAL ORDER
)
DOUGLAS J. POSELEY,)
)
Respondents.)
)

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 ("RICO or "Petitioner"), through its undersigned attorney, and Respondents LAHAINA CARPET & INTERIORS, INC. (hereinafter "Respondent Lahaina") and DOUGLAS J. POSELEY ("hereinafter "Respondent Poseley") (collectively "Respondents") enter into this Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent Lahaina was the holder of the following specialty licenses under license number CT 21376, which was issued by the Contractors License Board (hereinafter the "Board"): C-7 (carpet laying) and C-21 (flooring). Respondent Lahaina's CT 21376 license as well as its specialty contractor's licenses were issued on or about March 24, 1998 and are set to expire on September 30, 2016.

2. At all relevant times herein, Respondent Poseley, the Responsible Managing Employee (“RME”), possessed specialty licenses under license number CT 6045 for carpet laying (C-7) and flooring (C-21). Respondent Poseley’s C-7 license was issued on or about July 20, 1972; Respondent Poseley’s C-21 license was issued on or about October 13, 1976. Respondent Poseley’s CT 6045 license was issued on or about July 20, 1972. All of Respondent Poseley’s licenses are set to expire on September 30, 2016.

3. Respondents’ mailing address for purposes of this action is 1036 Limahana Place #3L, Lahaina, Hawaii 96761.

4. RICO received a complaint alleging that on or about November 14, 2006, Respondents entered into a contract with David and Donna Rusher (“the Rushers”) to install flooring at the Rusher’s residence located at 46-2 Puamana Street, Lahaina, Hawaii 96761 in exchange for \$14,213.45.

5. RICO alleges that in entering the aforementioned contract, Respondents failed to: 1) explain in detail the lien rights of all parties performing under the contract, 2) explain the homeowner’s right to demand the bonding on the project, 3) explain how the bond would protect the homeowner or the approximate expense of the bond, and 4) provide notice of the contractor’s right to resolve alleged construction defects prior to commencing any litigation under HRS Section 672E-11.

6. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statutes and/or rules as to Respondent Lahaina: HRS § 444-25.5(a)(1) (verbal disclosures of lien rights); HRS § 444-25.5(a)(2) (verbal disclosure of bonding rights); HRS § 444-25.5(b)(1) (written disclosure of lien obligations and bonding rights); HRS § 444-25(b)(2) (disclosure of Respondent’s Contractor Repair Act rights); Hawaii Administrative Rules (“HAR”) § 16-77-79(a)(4) (disclosure of bonding rights); and HAR § 16-77-80(a)(7) (disclosure of lien rights).

7. The forgoing allegations, if proven at an administrative hearing before the Board, would constitute a violation of the following rule as to Respondent Poseley: HAR § 16-77-71(5) (RME responsible for any violation of this chapter or chapter 444 HRS).

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

B. REPRESENTATIONS BY RESPONDENTS:

1. Respondents are fully aware that Respondents have the right to be represented by an attorney and voluntarily waive that right.

2. Respondents enter into this Settlement Agreement freely, knowingly, voluntarily, and under no coercion or duress.

3. Respondents are aware of the right to have a hearing to adjudicate the issues in the case. Pursuant to HRS § 91-9(d), Respondents freely, knowingly, and voluntarily waive the right to a hearing and agree to dispose of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondents, being at all times relevant herein licensed as contractors by the Board, acknowledge that Respondents are 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.

5. Respondents do not admit to violating any law or rule, but acknowledge that RICO has sufficient cause to file a Petition for Disciplinary Action against Respondents' licenses.

6. Respondents enter into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondents agree that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO No. CLB 2011-85-L.

8. Respondents understand this Settlement Agreement is public record pursuant to Hawaii Revised Statutes chapter 92F.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents agree to pay a fine, jointly and severally, in the amount of TWO THOUSAND FIVE HUNDRED AND NO/100 U.S. DOLLARS (\$2,500.00). 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: Dawnie Ichimura, Esq., 235 S. Beretania Street, 9th Floor, Honolulu, Hawaii 96813. The first payment of EIGHT HUNDRED THIRTY THREE DOLLARS AND 34/100 U.S. DOLLARS (\$833.34) shall be due no later than thirty (30) days following written notice of the Board's approval of this Settlement Agreement. Subsequent payments of EIGHT HUNDRED THIRTY THREE DOLLARS AND 33/100 U.S. DOLLARS (\$833.33) shall be due no later than the end of each calendar month thereafter.

2. Failure to Comply with Settlement Agreement. If Respondents fail to fully and timely comply with the terms of this Settlement Agreement as set forth in paragraph C.1 above, Respondents' licenses shall be automatically revoked upon RICO's filing of an affidavit with the Board attesting to such failure. In case of such revocation, Respondents shall turn in all indicia of the licenses to the Executive Officer of the Board within ten (10) days after receipt of notice of the revocation. In case of such revocation, Respondents understand Respondents cannot apply for a new license until the expiration of at least five (5) years after the effective date of the revocation. Respondents understand that if Respondents desire to become licensed again, Respondents 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 Respondents violate any provision of the statutes or rules governing the conduct of contractors in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

4. Approval of the Board. Respondents agree 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 Respondents in the Board's usual and customary fashion pursuant to the Administrative Procedure Act, Respondents agree that neither of the Respondents nor any attorney that Respondents may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Board's proceeding against Respondents on the basis that the Board has become disqualified to consider the case 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 Respondents to induce entry into this Settlement Agreement, and Respondents are 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.

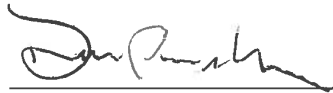
IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: Kahului, Hawaii, 8-8-16.
(CITY) (DATE)


LAHAINA CARPET & INTERIORS, INC.
Respondent


By: DOUGLAS J. POSELEY
Its Responsible Managing Employee

DATED: Kahului, Hawaii, 8-8-16.
(CITY) (DATE)


DOUGLAS J. POSELEY
Respondent

DATED: Honolulu, Hawaii, AUG 12 2016.


DAWNIE ICHIMURA
Attorney for Department of
Commerce and Consumer Affairs

IN THE MATTER OF THE CONTRACTOR'S LICENSE OF LAHAINA CARPET &
INTERIORS, INC. AND DOUGLAS J. POSELEY; SETTLEMENT AGREEMENT PRIOR TO
FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER;
CASE NO. CLB 2011-85-L.

APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII


JOHN POLISCHECK, JR.
Chairperson


ANACLETO "JOEY"
ALCANTARA, JR.


TYRUS KAGAWA


NATHAN T. KONISHI


LEONARD K. P. LEONG


KENT MATSUZAKI

AUG 18 2016

DATE


LESLIE ISEMOTO


WILLIAM A. KAMAI


PETER H. M. LEE

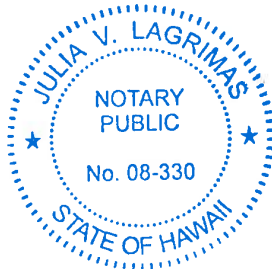

DANNY T. MATSUOKA


ALDON K. MOCHIDA

STATE OF HAWAII)
COUNTY OF Mau) SS.

On this 8 day of August, 2016, before me personally appeared DOUGLAS J. POSELEY, to me known to be the person described, acknowledged that he 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 8-8-16, 2016 was acknowledged before me by DOUGLAS J. POSELEY this 8 day of August, 2016, in the County Mau, in the County of Mau, in the State of Hawaii.

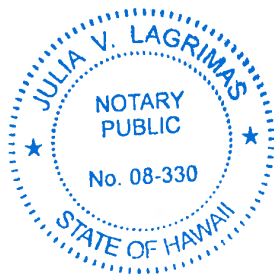



Julia V. Lagrimas
Name: JULIA V. LAGRIMAS
Notary Public, State of Hawaii
My Commission expires: 8-10-2016

STATE OF HAWAII)
COUNTY OF Maui) SS.

On this 8 day of August, 2016, before me personally appeared DOUGLAS J. POSELEY, to me known to be the person described, and who executed the foregoing instrument on behalf of LAHAINA CARPET & INTERIORS, INC., as its Responsible Managing Employee acknowledged that he 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 8-8, 2016 was acknowledged before me by DOUGLAS J. POSELEY this 8th day of August, 2016, in the City of Kahului, in the County of Maui, in the State of Hawaii.




Name: JULIA V. LAGRIMAS
Notary Public, State of Hawaii

My Commission expires: 8-10-2016

Redaction Summary (0 redactions)

0 Privilege / Exemption reason used: