

DIANE R. CORN 3912  
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

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 ) CLB 2005-278-L  
Contractor's Licenses of )  
)  
DAVIS TILE & MARBLE, INC. and ) SETTLEMENT AGREEMENT AFTER  
) FILING OF PETITION FOR DISCIPLINARY  
GARY M. DAVIS, ) ACTION AND BOARD'S FINAL ORDER  
)  
Respondents. )  
)  
)  
)

241092407

SETTLEMENT AGREEMENT AFTER 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 DAVIS TILE & MARBLE, INC. and GARY  
M. DAVIS (hereinafter "Respondents"), enter into this Settlement Agreement on the terms and  
conditions set forth below.

A. UNCONTESTED FACTS:

1. At all relevant times herein, Respondent Davis Tile & Marble, Inc. ("Respondent  
Davis Tile and Marble") was licensed by the Contractors License Board ("Board") as a specialty  
contractor under license number C 23071 51 and Respondent Gary M. Davis ("Respondent

RECEIVED  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
2009 DEC 31 A 10:09

2009 DEC 11 P 1:40

HEARINGS OFFICE

2009 FEB -5 A 9:08

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

Davis”) under license number C 23072 51. These licenses were issued on or about April 10, 2001 and will expire on or about September 30, 2010.

2. Respondents’ mailing address for purposes of this action is [REDACTED] [REDACTED] RICO received a complaint alleging that Respondents had engaged in poor workmanship and failed to disclose the lien/bond rights on its contract to complainant Robert Yackley.

3. 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 Administrative Rules (“HAR”) § 16-77-80 (workmanship) and Hawaii Revised Statutes (“HRS”) § 444-17 (failure to comply with chapter).

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

**B. REPRESENTATIONS BY RESPONDENTS:**

1. Respondents are fully aware that they have the right to be represented by an attorney of their choosing 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 neither admit nor deny the veracity of the allegation and that Respondents' acts violate the following statute(s) and/or rule(s): Hawaii Revised Statutes ("HRS") § 444-17 (failure to comply with chapter) and Hawaii Administrative Rule ("HAR") § 16-77-80 (workmanship).

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 Case No. CLB 2005-278-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondents agree to pay a fine in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), the payment of which shall be due within thirty (30) days of the Board's approval of this Settlement Agreement. Said 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: Diane Corn, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30<sup>th</sup> day to be in compliance with this Settlement Agreement.

2. Restitution. Respondents agree to pay restitution in the amount of \$297.46 to Ralph Robert Yackley. Payment shall be made by **cashier's check or money order made payable to Ralph Robert Yackley** and mailed to the Regulated Industries Complaints Office, Attn: Diane R. Corn Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. Payment

of restitution shall be due at the time this fully executed Settlement Agreement is returned to RICO.

3. 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(s) C.1 and C.2 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 license 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.

4. 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 pharmacists in the State of Hawaii, or if Respondents fail to abide by the terms of this Settlement Agreement.

5. Approval of the Board. Respondents agree that, except for the representations, agreements and covenants contained in Paragraphs C.6, C.7, C.8 and C.9 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Board.

6. 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 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.

7. 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.

8. 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.

9. 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 Kaunoi, HI, 12-8-08  
(CITY) (STATE) (DATE)



DAVIS TILE & MARBLE, INC.,  
GARY M. DAVIS  
As its President  
Respondent


DATED Kaunoi, HI, 12-8-08  
(CITY) (STATE) (DATE)



GARY M. DAVIS  
Respondent

DEC 11 2008


DATED: Honolulu, Hawaii, \_\_\_\_\_



DIANE R. CORN  
Attorneys for Department of Commerce and  
Consumer Affairs

IN THE MATTER OF THE CONTRACTOR'S LICENSES OF DAVIS TILE & MARBLE,  
INC. AND GARY M. DAVIS; SETTLEMENT AGREEMENT AFTER FILING OF PETITION  
FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; CASE NO. CLB 2005-278-L

REVIEWED AND RECOMMENDED FOR CONSIDERATION:

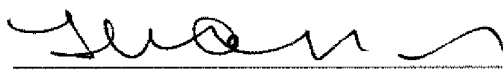
  
\_\_\_\_\_  
CRAIG H. UYEHARA  
Hearings Officer

DEC 29 2008  
\_\_\_\_\_  
DATE

APPROVED AND SO ORDERED:  
CONTRACTORS LICENSE BOARD  
STATE OF HAWAII

  
\_\_\_\_\_  
JUDY T. ARISUMI  
Chairperson

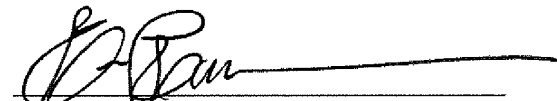
JAN 30 2009  
\_\_\_\_\_  
DATE

  
\_\_\_\_\_  
F. M. SCOTTY ANDERSON  
Vice Chairperson

  
\_\_\_\_\_  
GUY M. AKASAKI

  
\_\_\_\_\_  
NEAL ARITA

  
\_\_\_\_\_  
WILLIAM R. BROWN

  
\_\_\_\_\_  
ERIC CARSON

  
\_\_\_\_\_  
JOSEPH S. KINDRICH, II

  
\_\_\_\_\_  
RANDALL B. C. LAU

  
\_\_\_\_\_  
AUDREY E. J. NG, ESQ.

\_\_\_\_\_  
RONALD K. OSHIRO

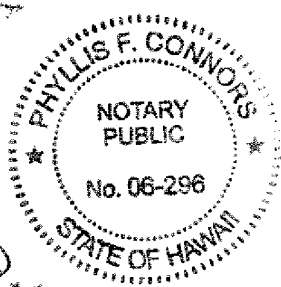
  
\_\_\_\_\_  
DENNY R. SADOWSKI

  
\_\_\_\_\_  
DARYL SUEHIRO

\_\_\_\_\_  
GERALD YAMADA

STATE OF Hawaii )  
 ) SS.  
COUNTY OF Hawaii )

On this 8<sup>th</sup> day of December, 2008, before me personally appeared Gary M. Davis, to me known to be the person described, and who executed the foregoing instrument, on his own behalf and on behalf of Davis Tile & Marble, Inc. as member and acknowledged that he executed the same as his free act and deed.



Phyllis F. Connors  
Name: Phyllis F. Connors  
Notary Public - State of Hawaii

My Commission expires: May 28, 2010

Doc Date: 2/08/05  
# Pages: 7 (without notes)  
Doc Description: Settlement Agreement after filing of Petition