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Department of Commerce and Consumer Affairs
State of Hawaii
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DEPT. OF COMMERCE AND CONSUMER AFFAIRS
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PROF. & VOCATIONAL LICENSING DIVISION
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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 Contractors Licenses of) CLB 2006-280-L; CLB 2006-437-L;
) CLB 2007-76-L; CLB 2007-117-L;
KIMBALL ROOFING ENERGY &) CLB 2007-256-L
MAINTENANCE, LLC; KIMBALL D.)
STRICKLAND, RME,) SETTLEMENT AGREEMENT AFTER
) FILING OF PETITION FOR DISCIPLINARY
Respondents.) ACTION AND BOARD'S FINAL ORDER
)

DEPT. OF COMMERCE AND CONSUMER AFFAIRS
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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 Respondents KIMBALL ROOFING ENERGY &
MAINTENANCE, LLC, and KIMBALL D. STRICKLAND, RME (hereinafter 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 KIMBALL ROOFING ENERGY &
MAINTENANCE ("Kimball Roofing") was licensed by the Contractors License Board
(hereinafter the "Board") as a C-42 (roofing) specialty contractor under License Number C



26454. The license was issued on or about November 18, 2005. The license was forfeited on or about September 14, 2008.

2. Kimball Roofing was a Hawaii limited liability corporation, but filed “Articles of Termination” on November 26, 2008.

3. At all relevant times herein, Respondent KIMBALL D. STRICKLAND was licensed by the Contractors License Board (hereinafter the “Board”) as a C-42 (roofing) specialty contractor under License Number C 26455. The license was issued on or about November 18, 2005. The license was forfeited on or about September 14, 2008.

4. Respondents’ mailing address for purposes of this action is P.O. Box 850, Midway, Utah 84049-0850.

5. On or about May 19, 2006, RICO received a complaint alleging that Respondents exhibited poor workmanship in the installation of a new roof on the residence located at 15-1456 Kahakai Boulevard, Pahoia, Hawaii (the “Souza Project”).

6. On or about July 24, 2006, RICO received a complaint alleging that Respondents exhibited poor workmanship in the installation of a new roof on the residence located at 15-3145 South Puni Makai Loop, Pahoia, Hawaii (the “Winger Project”).

7. On or about January 25, 2007, RICO received a complaint alleging that Respondents exhibited poor workmanship in the re-roofing on the residence located at 1513 Maunakai Street, Hilo, Hawaii (the “Yoshizawa Project”).

8. On or about January 29, 2007, RICO received a complaint alleging that Respondents exhibited poor workmanship in the furnishing and installation of a metal roof on the new residence located at 44 Waimalino Place, Hilo, Hawaii (the “Olson Trust Project”).

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9. On or about May 7, 2007, RICO received a complaint alleging that Respondents exhibited poor workmanship in the installation of seamless gutters and re-roofing and carport located at 16-441 Oliana Street, Keaau, Hawaii 96749 (the “Hammer Project”).

10. RICO also alleges that Respondents failed to provide the required disclosures prior to contracting for the Souza Project, the Winger Project, the Yoshizawa Project, the Olson Trust Project, and the Hammer Project (collectively, the “Projects”), and that Respondents’ contracts for the Projects did not include all required information and disclosures.

11. The foregoing allegations, if proven at an administrative hearing before the Board, would constitute violations of the following statutes and/or rules: Hawaii Revised Statutes (“HRS”) §§ 444-17(12) (wilful failure to comply with HRS chapter 444 or the rules promulgated thereunder), 444-25.5 (disclosures that contractor must make to homeowner) and Hawaii Administrative Rules (“HAR”) §§ 16-77-33(c) (specialty contractor shall not act or assume to act as a contractor in any classification other than those which the licensee holds), 16-77-79 (disclosures to homeowners required prior to contracting), 16-77-80 (information required in homeowner contracts), and 16-77-97 (all work shall conform to trade standards), as well as HAR sections 16-77-71 and 16-77-75 (RME responsible for acts and omissions of contracting entity).

12. Petitioner filed a “Petition for Disciplinary Action” in these cases on June 26, 2009. Subsequently, on or about July 30, 2009, Respondent Strickland filed for bankruptcy in the United States Bankruptcy Court, District of Utah, Case No. 09-27942, and listed the homeowners of the Projects and Petitioner as creditors. Notice of the discharge of the debtor (Respondent Kimball Strickland) was filed on November 12, 2009.

13. 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 agrees 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 a contractor by the Board acknowledges 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 acknowledges 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 Case Nos. CLB 2006-280-L, CLB 2006-437-L, CLB 2007-76-L, CLB 2007-117-L, and CLB 2007-256-L.

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

Handwritten signature and date: 6/23/10

C. TERMS OF SETTLEMENT:

1. Inactivation of Licenses. Respondents shall request and complete an inactivation application within ten (10) days of Respondents execution of this Settlement Agreement.

Respondents shall not reactivate their licenses for a period of not less than five (5) years from the inactivation of their licenses.

2. Non-Renewal of Licenses. Respondents agree to not renew their licenses for a period of five (5) years from the approval of this Settlement Agreement.

Respondents understand that Respondents cannot apply for a new license until the expiration of at least five (5) years from the approval of this Settlement Agreement. Respondents understand that if either or both Respondents desire to become licensed again, that the 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. 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 paragraphs 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 contractors 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

A handwritten signature in black ink, followed by the date "6/23/10".

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: midway, ut., 6/22, 2010.
(CITY) (STATE) (DATE)


KIMBALL D. STRICKLAND
Respondent

DATED: midway, ut., 6/22, 2010.
(CITY) (STATE) (DATE)

KIMBALL ROOFING ENERGY &
MAINTENANCE, LLC

By: 

vs Kimball Strickland

JUL - 1 2010

DATED: Honolulu, Hawaii, _____


WENDY J. UTSUMI

Attorney for Department of Commerce and
Consumer Affairs

 6/23/10

IN THE MATTER OF THE CONTRACTORS' LICENSES OF KIMBALL ROOFING ENERGY & MAINTENANCE, LLC; KIMBALL D. STRICKLAND, RME; SETTLEMENT AGREEMENT AFTER FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER; CASE NOS. CLB 2006-280-L, CLB 2006-437-L, CLB 2007-76-L, CLB 2007-117-L, CLB 2007-256-L

REVIEWED AND RECOMMENDED FOR CONSIDERATION:

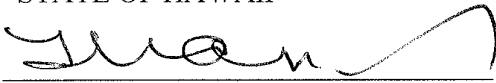


CRAIG H. UYEHARA
Hearings Officer

7/2/10

DATE


APPROVED AND SO ORDERED:
CONTRACTORS LICENSE BOARD
STATE OF HAWAII



F. M. SCOTTY ANDERSON
Chairperson

JUL 26 2010

DATE



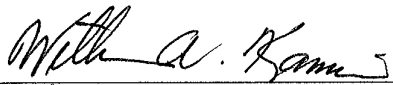
NEAL ARITA
Vice Chairperson

GUY M. AKASAKI

ERIC CARSON



JOHN E. K. DILL



WILLIAM A. KAMAI



RANDALL B. C. LAU




HAROLD L. MARTIN



ALDON K. MOCHIDA



RONALD K. OSHIRO



DENNY R. SADOWSKI



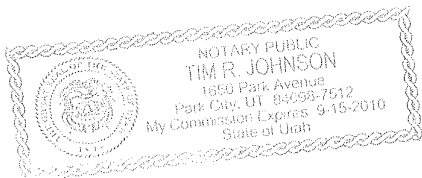
DARYL SUEHIRO
PVL 08/25/09

GERALD YAMADA


6/23/10

STATE OF UTAH)
) SS.
COUNTY OF Summit)

On this 23 day of June, 2010, before me personally appeared KIMBALL D. STRICKLAND, to me known to be the person described, and who executed the foregoing instrument on behalf of himself and KIMBALL ROOFING ENERGY & MAINTENANCE, LLC, as its member, and acknowledged that he executed the same as his free act and deed. This 9-page SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR DISCIPLINARY ACTION AND BOARD'S FINAL ORDER, dated 15 June, 2010 was acknowledged before me by Tim Johnson, this 23 day of June, 2010, in the City of Park City, State of Utah.



[Signature]
Name: Tim Johnson
Notary Public, State of UTAH

My Commission expires: 15 Sept 2010

[Signature] 6/23/10