

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 JUL 10 A 11: 31

HEARINGS OFFICE



BOARD OF PUBLIC ACCOUNTANCY
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Certified Public)
Accountant's License of) ACC 2007-15-L
)
DOUGLAS T. NONAKA,) BOARD'S FINAL ORDER
)
Respondent.)
_____)

BOARD'S FINAL ORDER


On April 15, 2009, the duly appointed Hearings Officer submitted her proposed Findings of Fact, Conclusions of Law and Recommended Order in the above-entitled matter to the parties. The parties were given an opportunity to file written exceptions; however, no exceptions were filed.

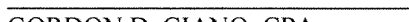
Upon review of the entire record of this proceeding, the Board adopts the Hearings Officer's recommended decision as the Board's Final Order and finds and concludes that there are no genuine issues of material fact and that Petitioner is entitled, as a matter of law, to an order concluding that Respondent violated HRS §§ 436B-19(12), 466-9(b)(8), 466-9(b)(9) and 466-9(b)(10) and dismissing the charge that Respondent violated HRS § 466-9(b)(5) and as such, grant Petitioner's Motion for Summary Judgment.

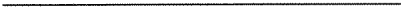
For the violations found, the Board orders that Respondent's license be revoked.


DATED: Honolulu, Hawaii, July 9, 2009


Doreen L. Griffith
DOREEN L. GRIFFITH, CPA
Vice-Chairperson



MICHAEL CHING, CPA
Board Member



GORDON D. CIANO, CPA
Board Member



MARK D. HUNSAKER, CPA
Board Member


STEVEN R. OBERG, CPA
Board Member


KEITH A. REGAN
Board Member


EMERITO C. SANIATAN
Board Member


KENT K. TSUKAMOTO, CPA
Board Member


THOMAS T. UENO, CPA
Board Member



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 APR 22 P 12: 08

BOARD OF PUBLIC ACCOUNTANCY
OFFICE OF ADMINISTRATIVE HEARINGS HEARINGS OFFICE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII


In the Matter of the Certified Public)	ACC 2007-15-L
Accountant's License of)	
)	
DOUGLAS T. NONAKA,)	ERRATA
)	
Respondent.)	
_____)	

ERRATA

Paragraph 4, page 4 of the undersigned Hearings Officer's Findings of Fact, Conclusions of Law and Recommended Order dated April 15, 2009 should read as follows:

(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[.]

DATED: Honolulu, Hawaii, APR 22 2009



 SHERYL LEE A. NAGATA
 Administrative Hearings Officer
 Department of Commerce
 and Consumer Affairs



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

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HEARINGS OFFICE

BOARD OF PUBLIC ACCOUNTANCY
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of the Certified Public)	ACC 2007-15-L
Accountant's License of)	
)	HEARINGS OFFICER'S FINDINGS OF
DOUGLAS T. NONAKA,)	FACT, CONCLUSIONS OF LAW AND
)	RECOMMENDED ORDER GRANTING
Respondent.)	PETITIONER'S MOTION FOR SUMMARY
)	JUDGMENT

HEARINGS OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER
GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

On May 28, 2008, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner") filed a petition for disciplinary action against the certified public accountant's license of Douglas T. Nonaka ("Respondent"). The matter was set for hearing pursuant to Hawaii Revised Statutes ("HRS") Chapters 91, 92 and 466, and the Notice of Hearing and Pre-Hearing Conference ("Notice") was transmitted to the parties.

On June 26, 2008, Petitioner filed a Motion for Summary Judgment ("Motion"). The Motion was set for hearing on July 31, 2008.

On July 2, 2008, Respondent filed a request that the pre-hearing conference set for July 21, 2008 be rescheduled to mid-November 2008. By a letter dated July 10, 2008, Respondent clarified that he was also requesting that the hearing on the Motion and the hearing on the merits set for August 21, 2008 also be postponed. By a letter dated July 9, 2008, Petitioner objected to the continuance of the pre-hearing conference or the hearing on the Motion. However, if the Motion was granted, Petitioner stated that it would not

object to continuing the hearing to November 2008 so that Respondent could present evidence in mitigation of sanctions.

On July 16, 2008, the Hearings Officer issued an order granting Respondent's request for postponement and rescheduled the pre-hearing conference to October 20, 2008, the hearing on Petitioner's Motion to November 18, 2008 and the hearing on the merits to December 11, 2008.

On November 18, 2008, a hearing was held on Petitioner's Motion. John Hassler, Esq. represented Petitioner and Respondent appeared *pro se*. At the outset, Mr. Hassler stated that paragraph 6 of the Petition was dismissed and/or the argument presented waived as Respondent was not convicted at the time he submitted his 2005 renewal application. Petitioner's Motion was taken under advisement, and Respondent was instructed to advise the Hearings Officer and Petitioner by December 9, 2008 if the hearing on December 11, 2008 was still necessary, as Respondent believed that he had presented all the evidence he intended to present at the hearing on the Motion. There was no response from Respondent so the hearing scheduled for December 11, 2008 was taken off the calendar.

Having reviewed and considered the evidence and arguments presented at the hearing, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and recommended order granting Petitioner's Motion.

II. FINDINGS OF FACT

1. Respondent was licensed in Hawaii as a certified public accountant on April 7, 1978, License No. CPA 1432. That license expired on December 31, 2007.

2. In July 2005, Respondent entered into a plea agreement with the Department of the Attorney General in State v. Douglas Nonaka, Cr. No. 03-1-2561. In this plea agreement, Respondent agreed to plead guilty to four counts of the lesser-included offense of Sale of Unregistered Securities, four counts of the lesser-included offense of Sale of Securities by an Unregistered Person, and four counts of the lesser-included offense of Prohibited Securities Practice, all Class B felonies. Respondent also agreed to pay \$1,087,500.00 in restitution to 26 individuals, all except one of which were

his CPA clients. This Plea Agreement arose out of the sale of 21st Century Satellite Communications, Inc. promissory notes.

2. On August 15, 2005, Respondent pleaded guilty and a written guilty plea was filed in open court. The written guilty plea, signed by Respondent on August 11, 2005, contains the following statement:

On October 1998 to and including April 30, 2000, I recklessly sold unregistered securities for amounts between \$5,000.00 but less than \$100,000.00 on four occasions. During these four transactions, I was not registered to sell securities. I also recklessly made untrue statements of material fact during these four transactions.

3. Respondent was convicted of the charges on October 3, 2007.

III. CONCLUSIONS OF LAW

Petitioner charged Respondent with violating the provisions of Hawai'i Revised Statutes ("HRS") §§ 436B-19(12), 466-9(b)(5), 466-9(b)(8), 466-9(b)(9) and 466-9(b)(10) which provide:

§ 466-9 Disciplinary action.

(b) In addition to any other grounds for disciplinary action authorized by law, any one or more of the following shall constitute grounds for disciplinary action;

...

(5) Dishonesty, deceit, fraud, or gross negligence in the practice of public accountancy or in the filing or failure to file a licensee's or firm's own income tax returns;

...

(8) Conviction of any crime an element of which is dishonesty or fraud, under the laws of the United States, or of this State, or of any other state if the act involved would have constituted a crime under the laws of this State;

(9) Performance of any fraudulent act while holding a license or permit issued under this chapter; or

(10) Any conduct reflecting adversely upon the licensee's or permit holder's fitness to engage in the practice of public accountancy.

HRS § 436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial or condition of license. In addition to any other acts or conditions provided by law, the licensing authority may refuse to renew, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, any license for any one or more of the following acts or conditions on the part of the licensee or the applicant thereof:

...

(19) 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[.]

Based on Respondent's guilty plea and conviction, the Hearings Officer concludes that Respondent was convicted of a crime, an element of which is dishonesty or fraud, in violation of HRS § 466-9(b)(8), that the performance of the fraudulent acts were while Respondent was holding a license issued under HRS Chapter 466 in violation of HRS § 466-9(b)(9), and that the conduct described in the guilty plea was conduct that adversely reflected upon Respondent's license or fitness to engage in the practice of public accountancy, in violation of HRS § 466-9(b)(10).

Respondent argued that he did not violate HRS § 466-9(b)(5) as the criminal case involved securities violations, and had nothing to do with tax preparation or tax consulting. In order to find a violation of HRS § 466-9(b)(5), the facts must show that Respondent was dishonest, deceitful, fraudulent or grossly negligent in the practice of public accountancy. HRS § 466-3 defines the "practice of public accountancy" as:

[t]he performance or the offering to perform, by a person or firm holding itself out to the public as a licensee, for a client or potential client of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one or

more kinds of management advisory or consulting services,
or the preparation of tax returns or the furnishing of advice
on tax matters.

The evidence presented showed that Respondent's conduct was dishonest or deceitful and that Respondent sold the unregistered securities to his clients. However, based on the evidence presented, the Hearings Officer concludes that Petitioner failed to show by a preponderance of the evidence that Respondent's conduct was in the practice of public accountancy, as defined by HRS § 466-3, because the evidence presented, without more, was insufficient to show that it involved the use of accounting or auditing skills. Accordingly, the Hearings Officer recommends that this charge be dismissed.


Based on the above, the Hearings Officer concludes that Respondent violated HRS § 436B-19(12).

IV. RECOMMENDED ORDER

Based on the foregoing findings and conclusions, the Hearings Officer recommends that the Board find and conclude that there are no genuine issues of material fact and that Petitioner is entitled, as a matter of law, to an order concluding that Respondent violated HRS §§ 436B-19(12), 466-9(b)(8), 466-9(b)(9) and 466-9(b)(10) and dismiss the charge that Respondent violated HRS § 466-9(b)(5) and as such, grant Petitioner's Motion.

For the violations found, the Hearings Officer recommends that the Board adopt the Petitioner's recommendation that Respondent's license be revoked.

DATED: Honolulu, Hawaii, APR 15 2009.



SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs