



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2009 JUN 18 P 12:10

HEARINGS OFFICE

ACTIVITY DESK PROGRAM  
OFFICE OF ADMINISTRATIVE HEARINGS  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Activity Desk	)	ADP 2007-1-L; ADP 2007-16-L;
Registration of	)	ADP 2008-1-L
	)	
ONLY IN PARADISE, LLC,	)	DIRECTOR'S FINAL
	)	ORDER
Respondent.	)	
_____		)

DIRECTOR'S FINAL ORDER

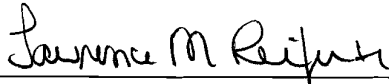
On May 22, 2009, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order to the Director of the Department of Commerce and Consumer Affairs ("Director") and to the parties. Copies of the Hearings Officer's recommended order were also transmitted to the parties. The copy of the recommended decision sent to Only in Paradise, LLC ("Respondent"), was returned by the Post Office marked, "Return to Sender; Moved Left No [REDACTED]; Unable to Forward." The parties were subsequently provided an opportunity to file exceptions; however, no exceptions were filed.

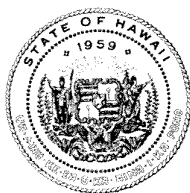
Upon review of the entire record of this proceeding, the Director adopts the Hearings Officer's recommended decision as the Director's Final Order. Accordingly, the Director finds and concludes that the evidence was sufficient to establish Respondent Only In Paradise, LLC's violation of Hawaii Revised Statutes ("HRS") §§436B-19(7) and 436B-19(8) in Count II; HRS §436B-19(2) in Count III; HRS §§436B-19(8), 468M-3(5), 468M-4, and Hawaii Administrative Rules ("HAR") §16-117-48(7) in Count IV; and HRS §468M-4,

HAR §16-117-48(7), and HRS §436B-19(8) in Count V. The evidence was insufficient to prove a violation of HAR §§16-117-14(b) and 16-117-48(4) in Count I.

For the violations found, Respondent's activity desk registration is revoked and Respondent shall immediately submit all indicia of registration as an activity desk in the State of Hawaii to the Executive Officer of the Activity Desk Program. The Director further orders that Respondent pay within sixty days of the Director's Final Order: (1) restitution to Karen Meckes in the sum of \$804.00; (2) restitution to King Parsons Enterprises, Ltd., dba Maita'i Catamaran, in the sum of \$3,670.00; and (3) a fine in the sum of \$5,000.00. Payment of the fine shall be by certified check or money order payable to the "State of Hawaii, Compliance Resolution Fund." Payment of the restitution shall be payable to Karen Meckes. Payments shall be sent to the Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, 235 South Beretania Street, ninth floor, Honolulu, Hawaii 96813. Payment of the restitution and fine shall be conditions for relicensure following the revocation period.

DATED: Honolulu, Hawaii: June 17, 2009.

  
\_\_\_\_\_  
LAWRENCE M. REIFURTH, Director  
Department of Commerce and  
Consumer Affairs



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

2009 MAY 22 A 9: 29

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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of the Activity Desk	)	ADP 2007-1-L; ADP 2007-16-L
Registration of	)	ADP 2008-1-L
	)	
ONLY IN PARADISE, LLC,	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
Respondent.	)	CONCLUSIONS OF LAW,
	)	AND RECOMMENDED
	)	ORDER
	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND RECOMMENDED ORDER

I. INTRODUCTION

On June 16, 2008, the Department of Commerce and Consumer Affairs, through its Regulated Industries Complaints Office ("Petitioner"), filed a petition for disciplinary action against the activity desk registration of Only In Paradise, LLC ("Respondent"). The matter was duly set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties. After unsuccessful efforts to locate the present whereabouts of Respondent, Petitioner was granted leave to serve the notice of hearing on Respondent by publication.

On May 5, 2009, this matter came on for hearing before the undersigned Hearings Officer; John Hassler, Esq. appeared for Petitioner. Respondent failed to appear.

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.

II. FINDINGS OF FACT

1. Respondent was organized as a domestic limited liability company on September 23, 2005.

2. Brad Wirt (“Wirt”) is the sole member of Respondent.

3. Respondent was originally registered as an activity desk, AD 807, on November 7, 2005.

4. Respondent’s activity desk registration expired on December 31, 2007.

COUNT I

5. On September 1, 2005, Respondent used “Hawaiiig Adventures” in a contract for its activity desk business.

6. Prior to September 1, 2005, Respondent did not disclose its use of the name, “Hawaiiig Adventures” to the Activity Desk Program (“Program”). Respondent was not registered as an activity desk until November 7, 2005.

COUNT II

7. On or about May 11, 2007, Karen Meckes (“Meckes”), a resident of Northhampton, Pennsylvania, entered into a contract with Respondent to purchase travel and activity desk products/services for Meckes and her companion.

8. Through Respondent, Meckes purchased travel services and activities during a vacation in Hawaii in October 2007, including air transportation, hotel accommodations, a rental car, an all gay catamaran cruise, a gay luau group night, a dolphin adventure, and a Hana/Haleakala helicopter adventure.

9. On or about May 18, 2007, Meckes sent to Respondent a personal check in the amount of \$3,441.55 for partial payment of the travel services and activities she had booked through Respondent.

10. On or about August 3, 2007, Meckes sent to Respondent a personal check in the amount of \$1,302.45 for the balance due for the travel services and activities.

11. Meckes did not receive an itinerary of the activities she had purchased from Respondent.

12. On October 21, 2007, Meckes and her companion were scheduled to attend a gay luau group night which Meckes had purchased from Respondent.

13. Instead, Meckes and her companion were sent to Germaine's luau, which was not the gay luau group night that was advertised by Respondent on Respondent's website and that Meckes had purchased from Respondent.

14. On October 24, 2007, Meckes and her companion were scheduled to attend a dolphin adventure at Sea Life Park, which they had purchased from Respondent.

15. When Meckes and her companion arrived at Sea Life Park, Meckes was informed that their tickets had not yet been paid for and that they would have to pay for them.

16. Meckes called Wirt and was told that the Sea Life Park representative did not know how to run Wirt's credit card. The representative subsequently attempted to run Wirt's credit card again without success.

17. Meckes called Wirt back at which time Wirt yelled at Meckes and told her that he did not care about this problem.

18. Meckes eventually paid \$264.00 to Sea Life Park with her credit card in order to attend the dolphin adventure.

19. Meckes subsequently called Wirt to cancel the Hana/Haleakala helicopter tour (\$480.00) and rental car (\$60.00) and to obtain a refund for those two items in addition to the dolphin adventure. Wirt agreed and hung up.

20. On October 25, 2007, Meckes and her companion were scheduled to leave Oahu for Maui.

21. Meckes was informed by the airline and the hotel that Respondent had canceled all remaining travel services, including their return flight home.

22. Meckes contacted Wirt who then rebooked the flights and hotel accommodations.

23. Respondent booked Meckes' flight to Maui at the wrong time and as a result, Meckes had to pay an additional charge to have the flight changed.

24. Wirt told Meckes that she would have to pay a deposit to the hotel until he sent payment to the hotel. Fearing that Respondent would fail to pay for the hotel, Meckes got the hotel to bill Respondent for the hotel accommodations.

25. While on Maui, Meckes called Wirt to ask if she could receive her refund while on Maui so that she and her companion could enjoy some activities. Wirt screamed at Meckes and cursed her and threatened to call the police if she called him again.

26. On November 6, 2007, after returning home, Meckes called Wirt to ask about her refund of \$854.00 for the canceled travel services and activities.

27. Meckes has been unsuccessful in getting any response from Respondent.

#### COUNT III

28. Meckes' contract with Respondent states at page 7:

**Charter Surety:** Operator [Only in Paradise, LLC] has established a Surety Trust Agreement with Marshall & Ilsley Trust Company, 321 N. Main Street, West Bend, WI 53095 ("trustee") for the protection of charter participants. Unless you file any claim you may have with Operator or with Trustee within 60 days after the termination of a charter, Operator and Trustee will be released from all further liability to you.

29. Respondent has not established any such surety trust agreement with Marshall & Ilsley Trust Company.

#### COUNT IV

30. On September 1, 2005, more than two months before registering as an activity desk, Respondent, dba Hawaii Adventures, entered into a contract with Oahu Nature Tours, Inc. ("ONT"), in which Respondent was to obtain reservations for ONT's activities in consideration of a 35% commission.

31. On November 7, 2006, Respondent paid ONT by check for amounts Respondent owed to ONT under contract.

32. The check was returned to ONT for non-sufficient funds.

33. On January 10, 2007, Respondent paid ONT by check for the amounts due to ONT.

#### COUNT V

34. In the summer of 2006, King Parsons Enterprises, Ltd., dba Maita'i Catamaran ("Maita'i") entered into a verbal agreement with Respondent by which Respondent would sell Maita'i's activities in exchange for a 35% commission.

35. After entering into the contract, Respondent made payments to Maita'i by checks on an account with non-sufficient funds.

36. Respondent owes Maita'i a total of \$3,670.00. Maita'i has had no contact with Respondent since 2007.

III. CONCLUSIONS OF LAW

Petitioner has charged Respondent with violating the following provisions of the Hawaii Revised Statutes ("HRS") and Hawaii Administrative Rules ("HAR"):

COUNT I

§16-117-14 Registration issued; notice. (a) A registration shall be issued only to activity desks meeting the requirements of Act 231, SLH 1992, and this chapter.

\* \* \* \*

(b) Unless provided otherwise, in the event of any change of information or documentation, each activity desk shall notify the director, in writing, within ten days of the change.

\* \* \* \*

§16-117-48 Grounds for denial, revocation, suspension, refusal to renew or restore, or to condition registration. In addition to any other acts or conditions provided by law, the director may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any registration for any one or more of the following acts or conditions:

\* \* \* \*

(4) Failure to notify the director of any change of information, documentation, or mailing address in accordance with section 16-117-14, and subchapter 5;

\* \* \* \*

COUNT II

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** 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:

\* \* \* \*

(7) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of the licensed profession or vocation;

(8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

\* \* \* \*

COUNT III

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** 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:

\* \* \* \*

(2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;

\* \* \* \*

COUNT IV

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** 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:

\* \* \* \*



(8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

\* \* \* \*

**§468M-3 Prohibited acts.** No activity desk shall engage in any of the following practices:

\* \* \* \*

(5) Failing to possess a current and valid registration prior to engaging in business or advertising as an activity desk.

\* \* \* \*

**§468M-4 Payment provision.** Unless the express written contract has a provision to the contrary, payment shall be due and payable thirty days from the date of invoice.

§16-117-48 Grounds for denial, revocation, suspension, refusal to renew or restore, or to condition registration. In addition to any other acts or conditions provided by law, the director may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any registration for any one or more of the following acts or conditions:

\* \* \* \*

(7) Violating this chapter, the applicable registration laws, or any rule or order of the director;

\* \* \* \*

COUNT V

**§468M-4 Payment provision.** Unless the express written contract has a provision to the contrary, payment shall be due and payable thirty days from the date of invoice.

\* \* \* \*

§16-117-48 Grounds for denial, revocation, suspension, refusal to renew or restore, or to condition registration. In addition to any other acts or conditions provided by law, the director may deny, revoke, suspend, refuse to renew or restore, or condition in any manner, any registration for any one or more of the following acts or conditions:

\* \* \* \*

(7) Violating this chapter, the applicable registration laws, or any rule or order of the director;

\* \* \* \*

**§436B-19 Grounds for refusal to renew, reinstate or restore and for revocation, suspension, denial, or condition of licenses.** 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:

\* \* \* \*

(8) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;

\* \* \* \*

The uncontroverted evidence was sufficient to establish Respondent's violation of HRS §§436B-19(7) and 436B-19(8) in Count II; HRS §436B-19(2) in Count III; HRS §§436B-19(8), 468M-3(5), 468M-4, and HAR §16-117-48(7) in Count IV; and HRS §468M-4, HAR §16-117-48(7), and HRS §436B-19(8) in Count V. The evidence was insufficient to prove a violation of HAR §§16-117-14(b) and 16-117-48(4) in Count I.

#### IV. RECOMMENDED ORDER

For the violations found, the Hearings Officer recommends that Respondent's activity desk registration be revoked and Respondent be ordered to immediately submit all indicia of registration as an activity desk in the State of Hawaii to the Executive Officer of the Program. The Hearings Officer further recommends that Respondent be ordered to pay within sixty days of the Director's Final Order: (1) restitution to Karen Meckes in the sum of

