

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

2012 APR 30 P 4: 05

HEARINGS OFFICE

In the Matter of:

MARK K. TERUYA dba MRE, LLC AND
SENIOR RESOURCES OF HAWAII,
INCORPORATED dba
USA WEALTH RESOURCES,

Respondents.

) SEU-2001-095; SEU-2001-096;
) SEU-2004-037; SEU-2005-023;
) SEU-2005-043; SEU-2005-050;
) SEU-2005-051; SEU-2005-064;
) SEU-2006-005; SEU-2006-006;
) SEU-2007-007; SEU-2007-008;
) SEU-2007-009; SEU-2007-010;
) SEU-2007-011; SEU-2007-012;
) SEU-2007-035; and SEU-2007-036
)
) CONSENT ORDER AS TO
) RESPONDENTS MARK K. TERUYA
) dba MRE, LLC AND SENIOR
) RESOURCES OF HAWAII,
) INCORPORATED dba USA WEALTH
) RESOURCES; STIPULATIONS
) AND CONSENT TO ENTRY OF
) CONSENT ORDER
)
)

CONSENT ORDER AS TO RESPONDENTS MARK K. TERUYA dba MRE, LLC
AND SENIOR RESOURCES OF HAWAII, INCORPORATED
dba USA WEALTH RESOURCES

I. Statement of Jurisdiction and Applicable Statutory Law

Pursuant to the authority granted by the Uniform Securities Act, Chapter 485 of the Hawaii Revised Statutes ("HRS" and the Uniform Securities Act, the "Act"), the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii (the "Commissioner") conducted an investigation into the activities of Respondents MARK K. TERUYA dba MRE, LLC ("Teruya") and SENIOR RESOURCES OF HAWAII, INCORPORATED dba USA WEALTH RESOURCES ("Senior Resources" and together with

Teruya, the "Respondents") to determine if Respondents engaged in or were about to engage in any act or practice constituting a violation of the Act or any rule or order adopted thereunder.

From the information revealed pursuant to said investigation, the Commissioner has reasonable cause to believe that Respondents violated the law.

Respondents along with the Commissioner desire to fully resolve this matter without the need to complete a formal hearing and the expense associated therewith.

Based thereon, Respondents have consented, without admitting or denying the allegations or any wrongdoing set forth herein, to the issuance of this consent order ("Consent Order") and in connection therewith enter into Stipulations and Consent to Entry of Consent Order and Stipulations and Consent to Entry of Judgment Enforcing Commissioner's Final Order attached hereto.

The findings of fact and conclusions of law stated below are included herein solely for purposes of effecting the terms hereof and are not to be construed as admissions of liability or wrongdoing by or on the part of any Respondent.

THEREFORE, the Commissioner has determined that it is in the public interest to issue this Consent Order.

II. Procedural History

On September 7, 2007, a Preliminary Cease and Desist Order was filed against Respondents.

On September 12, 2007, Respondents requested an administrative hearing and a hearing was scheduled to commence the weeks of October 22, 2007 and October 29, 2007.

On October 8 and 9, 2007, Respondents filed Motions to Dismiss or in the Alternative, Motion for Summary Judgment.

On October 18, 2007, Respondents' Motions to Dismiss or in the Alternative, Motion for Summary Judgment were heard. Hearings Officer Rod Maile recommended that the Motion to Dismiss or in the Alternative, Motion for Summary Judgment as to Ronda F. Teruya be granted. All remaining Respondents' Motions to Dismiss or in the Alternative, Motion for Summary Judgment were denied.

On August 13, 2009, a Stipulation for Dismissal with Prejudice of Preliminary Order to Cease and Desist, dated September 7, 2007, as to Respondent Craig T. Teruya was filed as well as a Stipulation for Dismissal with Prejudice of Preliminary Order to Cease and Desist, dated September 7, 2007, as to Respondent Rodelia Y. Ferrer. On April 25, 2011, Commissioner's Final Order as to Ronda F. Teruya aka Ronda Fajayan aka Ronda Falarca Fajayan was filed following Hearings Officer Maile's recommendation, thus dismissing charges against Respondent Ronda F. Teruya aka Ronda Fajayan aka Ronda Falarca Fajayan.

On October 13, 2011, Respondants' Motion To Dismiss was denied by Hearings Officer David Karlen.

III. Findings of Facts

1. Respondent Mark Teruya is a resident of the State of Hawaii.
2. Between January 1, 2000 and through January 13, 2005, Respondent Mark Teruya was not registered with the State of Hawaii to conduct business as an investment adviser as defined under § 485-1(6), HRS and/or an investment adviser representative as defined under § 485-1(7), HRS.
3. Between January 14, 2005 and through September 7, 2007, Respondent Mark Teruya was registered with the State of Hawaii under the Act as an investment adviser

representative under CRD # 2670917 with federally registered investment adviser USA Wealth Management, LLC (CRD # 122082).

4. Respondent Senior Resources was incorporated in the State of Hawaii on August 1, 2002 and through September 7, 2007.

5. Between August 1, 2002 and through September 7, 2007, Respondent Senior Resources was not registered with the State of Hawaii to conduct business as an investment adviser as defined under § 485-1(6), HRS and/or an investment adviser representative as defined under § 485-1(7), HRS.

6. Respondent Mark Teruya was the president, vice-president, treasurer, secretary and director of Respondent Senior Resources between July 1, 2003 and through September 7, 2007.

7. Beginning in or about January 2000 and through September 2007, Respondents acted as investment advisers as defined under § 485-1(6), HRS and/or investment adviser representatives as defined under § 485-1(7), HRS.

8. Beginning in or about January 2000 and through September 2007, Respondents promoted their investment adviser business through weekly advertisements in "Midweek", a local Honolulu free newspaper and/or through "Midweek" postcards mailed to Hawaii residents.

9. Beginning in or about January 2000 and through September 2007, Respondents solicited Hawaii senior citizens through weekly advertisements in "Midweek" that offered free investment seminars as well as free meals, "collector" coin sets, and/or free tax preparation services.

10. On or about July 1, 2004, Respondents met with investors Walter and Judith Watanabe (the "WATANABES") and did the following:

- a. advised the WATANABES to liquidate their “securities” as defined under § 485-1(13), HRS, specifically, variable annuities;
- b. obtained Walter Watanabe’s signature on a blank Sun Life Assurance Company of Canada (U.S.) (“Sun Life”) “IRA And TSA TRANSFER AUTHORIZATION FORM”;
- c. facilitated the liquidation of the WATANABES’ variable annuities to fund Sun Life equity index annuity insurance products for the WATANABES; and
- d. as a result, caused the WATANABES to incur \$40,000.00 in liquidation fees associated with the liquidation of their variable annuities.

11. On or about August 1, 2004, Respondents advised the WATANABES to liquidate their securities and purchase equity index annuities insurance products. As a result, Respondents received compensation.

12. On or about July 1, 2004, Respondents engaged in acts, practices or courses of business that operate or would operate as a fraud or deceit upon persons, in violation of § 485-25(a)(3), HRS to wit: obtaining signatures from the WATANABES on blank pre-printed Sun Life asset transfer authorization forms and using the signed forms to liquidate securities from the WATANABES’ accounts.

IV. Conclusions of Law

THE COMMISSIONER, THEREFORE, CONCLUDES AS A MATTER OF LAW:

13. Paragraphs 1 through 12, inclusive, are realleged and incorporated herein as if set forth verbatim.

14. The Commissioner has jurisdiction over this matter pursuant to § 485-2, HRS.

15. A variable annuity constitutes a “security” within the meaning of § 485-1(13), HRS and other applicable authority.

16. Respondents’ aforesaid acts of advising investors, WATANABES, as stated in paragraphs 10 and 11 as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, constitute engaging in the business of advising others in the State of Hawaii as an investment adviser and/or an investment adviser representative within the meaning of §§ 485-1(6) and (7), HRS, respectively.

17. Since Respondents were not registered as investment advisers and/or investment adviser representatives during the period they engaged in the business of advising others, they acted as unregistered securities investment advisers and/or investment adviser representatives in violation of § 485-14, HRS.

18. Respondents’ aforesaid acts as stated in paragraph 12 in connection with the sale or liquidation of the WATANABES’ securities constitute securities fraud in violation of § 485-25(a)(3), HRS.

19. Pursuant to § 485-18.7, HRS, Respondents are jointly and severally liable to the WATANABES for fees associated with the liquidation of securities that were conducted in violation of §§ 485-14 and 485-25, HRS, respectively.

V. Order

NOW, THEREFORE, IT IS HEREBY ORDERED that:

On the basis of the Findings of Fact and Conclusions of Law, Respondents consent to the entry of this Consent Order for the sole purpose of settling the matters above.

Pursuant to § 485-18.7, HRS, that because of the aforementioned findings of facts and conclusions of law and/or because it appears that Respondents may engage in further acts or

practices in violation of the Act and Uniform Securities Act, Chapter 485A, HRS (hereinafter "Chapter 485A") and/or because it is found that this action is necessary and in the public interest for the protection of investors, IT IS HEREBY ORDERED that:

1. This Consent Order shall constitute a FINAL ORDER by the Commissioner under the Act regarding the matters above.

2. Respondents Mark Teruya and Senior Resources shall CEASE AND DESIST from engaging in any activities regulated by this Act and Chapter 485A, within, to or from the State of Hawaii for compensation until Respondents have fully complied with all requirements of the Act and Chapter 485A and until further order of the Commissioner.

3. Permanent Bar: Respondents Mark Teruya and Senior Resources shall be permanently barred and enjoined from applying for registration in the State of Hawaii and/or engaging in the business of a securities broker-dealer, securities agent, investment adviser or investment adviser representative and from transacting business in the securities industry as defined in the Act and Chapter 485A. Said bar and permanent injunction shall be effective upon the execution of this Consent Order by the Commissioner.

4. Administrative Penalty: Respondents Mark Teruya and Senior Resources, jointly and severally, shall pay an administrative penalty of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) to the State of Hawaii Department of Commerce and Consumer Affairs, Business Registration Division, for the allegations described above, as follows:

- a. EIGHT THOUSAND AND NO/100 DOLLARS (\$8,000.00) shall be made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund" and paid contemporaneously upon the signing of the Stipulations and Consent to Entry of Consent Order, the execution of

this Consent Order, and signing and execution of the Stipulations and Consent to Entry of Judgment Enforcing Commissioner's Final Order:

- b. On or before May 21, 2012, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) shall be made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund;"
- c. On or before June 20, 2012, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) shall be made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund;"
- d. On or before July 20, 2012, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) shall be made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund;" and
- e. On or before August 20, 2012, FIVE HUNDRED AND NO/100 DOLLARS (\$500.00) shall be made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund;"

Said payments shall be paid according to the above-referenced administrative penalty payment schedule by bank draft, cashier's check or money order made payable to: "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund" and delivered to the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, 335 Merchant Street, Suite 205, Honolulu, Hawaii, 96813.

5. Restitution: Respondents Mark Teruya and Senior Resources, jointly and severally, shall pay restitution to investors WATANABES in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00). Said restitution payments shall be paid according to the following payment schedule:

- a. On or September 19, 2012, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- b. On or before October 19, 2012, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- c. On or before November 19, 2012, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- d. On or before December 19, 2012, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- e. On or before January 18, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- f. On or before February 18, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- g. On or before March 20, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- h. On or before April 19, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- i. On or before May 20, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- j. On or before June 19, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- k. On or before July 19, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;

- l. On or before August 19, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- m. On or before September 18, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- n. On or before October 17, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- o. On or before November 18, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- p. On or before December 18, 2013, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- q. On or before January 17, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- r. On or before February 17, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- s. On or before March 19, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- t. On or before April 18, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- u. On or before May 19, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- v. On or before June 18, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;

In the Matter of: Mark K. Teruya; et. al.

Consent Order as to Respondents Mark K. Teruya dba MRE, LLC and Senior Resources of Hawaii, Incorporated
dba USA Wealth Resources

Case Nos. SEU-2001-095; et al.

Page 10 of 14

- w. On or before July 18, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- x. On or before August 18, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- y. On or before September 18, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- z. On or before October 17, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- aa. On or before November 17, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- bb. On or before December 17, 2014, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- cc. On or before January 19, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- dd. On or before February 18, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- ee. On or before March 20, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- ff. On or before April 20, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- gg. On or before May 20, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;

- hh. On or before June 19, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- ii. On or before July 20, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- jj. On or before August 19, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- kk. On or before September 21, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- ll. On or before October 20, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES;
- mm. On or before November 19, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES; and
- nn. On or before December 21, 2015, TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) shall be paid to investors WATANABES.

Said restitution payments shall be paid according to the above-referenced restitution payment schedule by bank draft, cashier's check or money order made payable to: "Judith and/or Walter Watanabe" and delivered to the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, 335 Merchant Street, Suite 205, Honolulu, Hawaii, 96813.

6. If, however, the Commissioner determines that Respondents have violated any of the terms and conditions of this Consent Order as set forth in section V, the Judgment Enforcing Commissioner's Final Order against Respondents Mark Teruya and/or Senior Resources shall be


immediately enforced upon filing of an affidavit with the Circuit Court of the First Circuit attesting to such violation of the terms and conditions of this Consent Order;

- a. Any violation of the terms of conditions of Section V4. of this Consent Order will result in an administrative penalty of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) immediately due and payable to the "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund."
- b. If payment of the administrative penalty pursuant to Section V4. of this Consent Order has been satisfied and Respondent violates the terms and conditions of Section V5., the administrative penalty referred to in Section V.6.a. above shall be immediately reduced to the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) and shall be immediately due and payable to the "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund."
- c. Any violation of the terms of conditions of this Consent Order other than Sections V4. and V5. will result in an administrative penalty of ONE HUNDRED THOUSAND AND NO/100 (\$100,000.00) immediately due and payable to the "State of Hawaii Department of Commerce and Consumer Affairs Compliance Resolution Fund."
- d. Upon any violation of the terms of conditions of this Consent Order, any unpaid administrative penalty as set forth in Section V4. and any unpaid restitution amount as set forth in Section V5. shall be accelerated to be immediately due and payable to the respective payees.

7. This Consent Order does not preclude the imposition of any sanction or other action against Respondents for any violations of the Act or Chapter 485A not covered by the above mentioned matters.

8. This Consent Order resolves and completes the above referenced matters.

DATED: Honolulu, Hawai'i: May 1, 2012.


TUNG CHAN
Commissioner of Securities
State of Hawaii

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:

MARK K. TERUYA dba MRE, LLC; AND
SENIOR RESOURCES OF HAWAII,
INCORPORATED dba USA WEALTH
RESOURCES,

RESPONDENTS.


)
) SEU-2001-095; SEU-2001-096;
) SEU-2004-037; SEU-2005-023;
) SEU-2005-043; SEU-2005-050;
) SEU-2005-051; SEU-2005-064;
) SEU-2006-005; SEU-2006-006;
) SEU-2007-007; SEU-2007-008;
) SEU-2007-009; SEU-2007-010;
) SEU-2007-011; SEU-2007-012;
) SEU-2007-035; and SEU-2007-036
)
)
) STIPULATIONS AND CONSENT TO
) ENTRY OF CONSENT ORDER AS TO
) MARK K. TERUYA AND SENIOR
) RESOURCES OF HAWAII,
) INCORPORATED
)

**STIPULATIONS AND CONSENT TO ENTRY OF CONSENT ORDER AS TO
MARK K. TERUYA AND SENIOR RESOURCES OF HAWAII, INCORPORATED**

The undersigned Respondents Mark Teruya and Senior Resources of Hawaii,
Incorporated (together, the "Respondents") hereby stipulate, agree, and consent as follows:

1. Respondents have fully read and understood the foregoing Consent Order without admitting the Findings of Fact and Conclusions of Law contained therein, and Respondents voluntarily stipulate and consent to the entry and issuance of said Consent Order;
2. Respondents waive any and all rights to a continued hearing or to otherwise challenge or appeal the foregoing Consent Order;

3. Respondents make these stipulations voluntarily and of their own free will;
4. Respondents have been advised of the right to consult with an attorney before stipulating, agreeing, and consenting to entry and issuance of the foregoing Consent Order and have been so advised by their attorney, Jay Suemori, Esq.;
5. No promise was made nor coercion used to induce Respondents to stipulate, agree, and consent to entry and issuance of the foregoing Consent Order;
6. This Consent Order does not preclude the imposition of any sanction or other action against Respondents for further violations of the Act and Chapter 485A;
7. Should Respondents fail to comply with the provisions of this Consent Order, the Commissioner may seek to impose sanctions and costs, and the Commissioner may seek other appropriate relief subject to the Respondents' right to a hearing; and
8. This document may be executed in counterparts and shall be fully enforceable upon the signing hereof by all the parties named below regardless of whether the parties execute a single copy or multiple copies of this Consent Order.



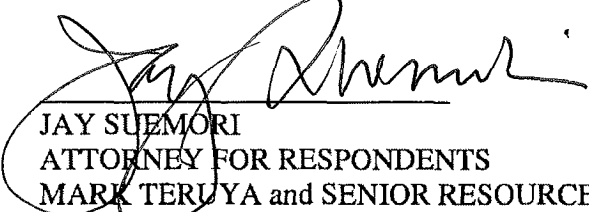
MARK K. TERUYA, individually and as
President, SENIOR RESOURCES OF
HAWAII, INCORPORATED
RESPONDENTS

APR 30 2012

Date

JTS

APPROVED AS TO FORM AND CONTENT:


JAY SUEMORI
ATTORNEY FOR RESPONDENTS
MARK TERUYA and SENIOR RESOURCES
OF HAWAII, INCORPORATED

4/25/12
Date

STATE OF Hawaii)
COUNTY OF Honolulu) ss.

On this 20th day of April, 2012, before me personally appeared

MARK K. TERUYA known to be the person described in and who executed the foregoing

Stipulations and Consent to Entry of Consent Order and acknowledged that he executed the same
as his free act and deed.

Doc. Date:

4-20-12

Pages:

3

Name:

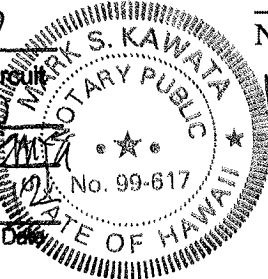
Mark S. Kawata

Doc. Description:

Stipulations and Consent to Entry of Consent Order as to Mark K. Teruya

Signature

NOTARY CERTIFICATION



Notary Public

Mark S. Kawata



My commission expires: 12/31/2015

In the Matter of Mark K. Teruya; et. al.
Stipulations and Consent to Entry of Consent Order as to Mark K. Teruya and Senior Resources of Hawaii,
Incorporated
Case Nos.: SEU-2001-095; et. al.
Page 3 of 3

STATE OF HAWAII

DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

2011 APR 25 P 1: 30

HEARINGS OFFICE

In the Matter of:	)	SEU-2001-095; SEU-2001-096;
	)	SEU-2004-037; SEU-2005-023;
	)	SEU-2005-043; SEU-2005-050;
MARK K. TERUYA dba MRE, LLC;	)	SEU-2005-051; SEU-2005-064;
SENIOR RESOURCES OF HAWAII,	)	SEU-2006-005; SEU-2006-006;
INCORPORATED dba USA WEALTH	)	SEU-2007-007; SEU-2007-008;
RESOURCES; and RONDA F. TERUYA	)	SEU-2007-009; SEU-2007-010;
aka RONDA FAJAYAN aka	)	SEU-2007-011; SEU-2007-012;
RONDA FELARCA FAJAYAN;	)	SEU-2007-035; and SEU-2007-036
)	
)	
	)	Commissioner's Final Order as to
RESPONDENTS.	)	Ronda F. Teruya aka Ronda Fajayan
	)	aka Ronda Felarca Fajayan
)	
)	

COMMISSIONER'S FINAL ORDER AS TO
RONDA F. TERUYA aka RONDA FAJAYAN aka RONDA FALARCA FAJAYAN

Petitioner State of Hawaii, Department of Commerce and Consumer Affairs, Securities Enforcement Branch (hereinafter "Petitioner"), has filed a Motion for Leave of the Commissioner of Securities to Request Review of the Hearings Officer's Recommended Order Granting Respondent Ronda F. Teruya's Motion to Dismiss or in the Alternative, Summary Judgment, or in the Alternative, Motion to the Commissioner of Securities for Leave to File Written Exceptions Recommending Reversal of the Hearings Officer's Recommended Order as to Respondent Ronda F. Teruya.

The matter now before the Commissioner of Securities (hereinafter "Commissioner") concerns the recommended order of the Office of Administrative Hearings dated June 3, 2009, granting the motion to dismiss or in the alternative, summary judgment regarding Respondent Ronda F. Teruya.

I. PROCEDURAL HISTORY

The procedural background in relevant part is as follows:

On September 7, 2007, the Commissioner issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing ("Preliminary Order") in the matter of Mark K. Teruya dba MRE, LLC; Senior Resources of Hawaii Incorporated dba USA Wealth Resources; Ronda F. Teruya aka Ronda Fajayan aka Ronda Felarca Fajayan; Rodelia Y. Ferrer aka Rodelia Y. Evia aka Rhoda Ferrer aka Delia, and Craig T. Teruya.

On October 8, 2007, Ms. Teruya filed a request for an administrative hearing on the Preliminary Order and filed a Motion to Dismiss, or in the Alternative, for Summary Judgment.

On October 17, 2007, the Petitioner filed Petitioner's Memorandum in Opposition to Respondents' Motion to Dismiss, or in the Alternative, for Summary Judgment.

On October 18, 2007, Respondent Ronda Teruya filed her Reply Memorandum.

On October 18, 2007, Petitioner filed its Supplemental Memorandum in Opposition of Respondent Ronda Teruya's Motion to Dismiss, or in the Alternative, for Summary Judgment.

On October 18, 2007, there was a hearing on the matter and the hearings officer from the Office of Administrative Hearings (hereinafter "Hearings Officer") granted Ms. Teruya's Motion to Dismiss, or in the Alternative, Summary Judgment.

On June 3, 2009, the Hearings Officer issued and filed its Recommended Order ("Recommended Order") and served the Recommended Order on Petitioner the following day, June 4, 2009.

The Petitioner did not file written exceptions to the Recommended Order at any time.

On October 22, 2010, the Petitioner filed its current motions to ask that the Recommended Order be reviewed and reversed, or written exceptions be permitted.

The Office of Administrative Hearings delivered the full record to the Commissioner on March 16, 2011.

II. MOTION FOR LEAVE TO FILE WRITTEN EXCEPTIONS DENIED

In review of Petitioner's Motion for Leave to File Written Exceptions, it should be noted that written exceptions were due in June 2009 and Petitioner filed the current motion in October 2010. The request to allow written exceptions over 15 months after the written Recommended Order to Petitioner was served and written exceptions were due is an excessive delay that is unjustified in the current case. Petitioner's Motion for Leave to File Written Exceptions is denied.

III. REVIEW OF RECOMMENDED ORDER

The preliminary question regarding the Recommended Order is whether the Commissioner can review the matter at hand. The Petitioner argues the Commissioner cannot issue a final order because to do so, the Commissioner must cite with specificity and cannot do so because there is no official court record. At the heart of Petitioner's argument is the lack of a transcript or recording of the relevant part of the administrative hearing of October 18, 2007.

To determine whether the Commissioner can review the matter to issue a final order, the first issue is to determine what is required to review a recommended order. HAR § 16-201-47 states “When no written exceptions have been filed, the authority, within a reasonable time after the hearings officer’s recommended decision has been filed, shall issue a written final decision and order, either adopting or modifying or reversing, in whole or in part, the hearings officer’s recommended decision. The authority shall state with specificity in the final decision the reasons for any modification or reversal in whole or in part, of the hearings officer’s recommended decision.”

Pursuant to HAR § 16-201-47, the Commissioner must cite with specificity the **reasons** for her decision if she modifies or reverses. The failure to provide a transcript or recording does not preclude a final decision as long as the Commissioner has enough of a record to determine her reasons. Moreover, she does not have to cite with specificity to affirm.

HAR § 16-201-32(a) sets forth the required information that must be part of the record which includes the recommended order, investigative reports, briefs, written exceptions and a number of other documents apart from a transcript or recording of a hearing. The rules do not require a transcript or recording of a hearing and do not create a presumption that the lack of one means the record is not reviewable. In modifying or reversing, it stands to reason that the Commissioner does not have to cite to a transcript or recording. The entire record is available to her and the rule does not bar the Commissioner from making a final order based on that record.

In the current matter, the record contains, among other items, both parties' submittals, investigative reports, copies of signed documents used in the respondents' practice, samples of Respondents' solicitations, the Recommended Order and an extensive transcript of witnesses. In totality, the Commissioner finds that the available record is adequate for review and a final order.

The matter now turns to the Commissioner's review of the Recommended Order. The Hearings Officer recommended that the Commissioner "grant Respondent Ronda Teruya's Motion to Dismiss, or in the Alternative, Summary Judgment." In the body of the Recommended Order, the hearings officer did not specify which motion he was recommending to grant. In footnote 1 of the Recommended Order, however, the Hearings Officer acknowledges that matters outside the pleadings were presented and that the motion to dismiss was thereby converted to a motion for summary judgment.

Although we are not bound by the Hawaii Rules of Civil Procedure ("HRCP"), we look to them for guidance. In accordance with HRCP Rule 12(b), a motion to dismiss shall be treated as a motion for summary judgment if matters outside the pleading are presented to and not excluded by the court. In the current case, it appears that a number of matters outside the pleadings were presented, none of which were excluded by the Hearings Officer. It should be further noted that both parties briefed the motion as a motion for summary judgment and offered evidence accordingly. The Commissioner will therefore treat the motion as a motion for summary judgment.

A motion for summary judgment is reviewed de novo as a matter of fact and law. Summary judgment is appropriate only if there is no genuine issue of material fact and

the moving party is entitled to judgment as a matter of law. Hawaii Community Federal Credit Union v. Keka, 94 Hawaii 213, 221, 11 P.3d 1, 9 (2000). The reviewing authority is not limited to the pleadings and must view all evidence and all factual inferences drawn from the evidence in the light most favorable to the non-moving party. Wong v. Cayetano, 111 Hawaii 462, 476, 143 P.3d 1, 15 (2006).

The burden is on the party moving for summary judgment to produce support for its claim that no genuine issue of material fact exists with respect to the essential elements of the claim or defense which the motion seeks to establish or which the motion questions and based on the undisputed facts, it is entitled to summary judgment. Wong at 476, 143 P.3d at 15. The burden then shifts to the non-moving party to respond to the motion for summary judgment and demonstrate specific facts, as opposed to general allegations, that present a genuine issue worthy of trial. Id. at 476, 143 P.3d at 15.

In the current case, the moving party presented the argument that Respondent Ronda Teruya did not advise or assist in the recommendation to clients to liquidate their securities to purchase other investments. They presented evidence that Respondent Ronda Teruya acted in her capacity as an insurance agent, and not in any other capacity that would implicate securities laws. The moving party met its burden that an essential element of the claim was not met.

In response, the non-moving party, the Petitioner must demonstrate specific facts that present a genuine issue worthy of a trial. It must be more than general allegations. In this case, Petitioner only argued generally that Respondent Ronda Teruya was part of a larger securities scheme and that Respondent Ronda Teruya was involved in the

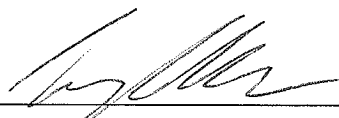
insurance side of the alleged scheme. Petitioner did not produce evidence showing that Respondent Ronda Teruya was involved to the extent Respondent Mark Teruya liquidated his clients' securities or advised them to do so, nor did Petitioner present affidavits from anyone who attended the hearing or any other evidence to show that Petitioner had directly challenged the moving party with specific factual allegations regarding Respondent Ronda Teruya that would have created a genuine issue of material fact regarding the securities matters. Respondent Ronda Teruya's conduct raises enough concern to survive a motion to dismiss but without further factual evidence, cannot survive a motion for summary judgment.

The Hearings Officer's Recommended Order Granting Respondents' Motion for Summary Judgment as to Respondent Ronda Teruya is hereby affirmed and summary judgment is granted.

Respondent Mark Teruya's Motion to Dismiss and Motion for Summary Judgment is denied and the Hearings Officer's Recommended Order as to Respondent Mark Teruya is affirmed.

As for the remaining respondents that the Hearings Officer's Recommended Order addresses, Respondent Rodelia Y. Ferrer and Respondent Craig T. Teruya were dismissed with prejudice in August 2009.

DATED: Honolulu, Hawaii, April 25, 2011



TUNG CHAN
Commissioner of Securities
STATE OF HAWAII
BUSINESS REGISTRATION DIVISION



DEPT. OF COMMERCE
AND CONSUMER AFFAIRS

2009 JUN -3 P 2: 01

BUSINESS REGISTRATION
OFFICE OF ADMINISTRATIVE HEARINGS
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

HEARINGS OFFICE

In the Matter of

MARK K. TERUYA dba MRE, LLC;
SENIOR RESOURCES OF HAWAII,
INCORPORATED dba USA WEALTH
RESOURCE; RONDA F. TERUYA aka
RONDA FAJAYAN aka RONDA
FELARCA FAJAYAN; RODELIA Y.
FERRER aka RODELIA Y. EVIA aka
RHODA FERRER aka DELIA; and
CRAIG T. TERUYA,

Respondents.

SEU-2001-095; SEU-2001-096;
SEU-2004-037; SEU-2005-023;
SEU-2005-043; SEU-2005-050;
SEU-2005-051; SEU-2005-064;
SEU-2006-005; SEU-2006-006;
SEU-2007-007; SEU-2007-008;
SEU-2007-009; SEU-2007-010;
SEU-2007-011; SEU-2007-012;
SEU-2007-035; SEU-2007-036

HEARINGS OFFICER'S
RECOMMENDED ORDER
GRANTING RESPONDENTS'
MOTION TO DISMISS AS TO
RESPONDENT RONDA F. TERUYA,
AND DENYING MOTIONS TO
DISMISS, OR IN THE ALTERNATIVE
FOR SUMMARY JUDGMENT AS TO
RESPONDENTS MARK K. TERUYA,
RODELIA Y. FERRER, AND CRAIG T.
TERUYA

**HEARINGS OFFICER'S RECOMMENDED ORDER GRANTING
RESPONDENTS' MOTION TO DISMISS AS TO RESPONDENT RONDA F.
TERUYA, AND DENYING MOTIONS TO DISMISS OR IN THE ALTERNATIVE
FOR SUMMARY JUDGMENT AS TO RESPONDENTS
MARK K. TERUYA, RODELIA Y. FERRER, AND CRAIG T. TERUYA**

On October 8, 2007, each of the Respondents above-named, by and through their attorney Mark S. Kawata, Esq., filed their respective Motions to Dismiss or in the Alternative

for Summary Judgment in the above-captioned matter.¹ Respondents' Motions were set for hearing and the parties were duly provided with notice of the hearing on Respondents' Motions.

On October 16, 2007, the Department of Commerce and Consumer Affairs, State of Hawai'i, by and through its attorney Sherrie T. Seki, filed Petitioner's Memorandum in Opposition of Respondents' Motions to Dismiss or in the Alternative for Summary Judgment.

On October 18, 2007, Respondents, by and through Mr. Kawata, filed their Reply Memorandum.

On October 18, 2007, Petitioner, by and through Ms. Seki, filed its Supplemental Memo in Opposition to Respondents' Motions to Dismiss, or in the Alternative for Summary Judgment.

On October 18, 2007, at 9:10 a.m., the hearing on Respondents' Motions to Dismiss, or in the Alternative for Summary Judgment was convened by the undersigned Hearings Officer. Respondent Mark Teruya was present, and Respondents were represented by Mr. Kawata. Petitioner was represented by its attorney Ms. Seki.

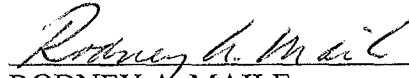
After reviewing and considering the submittals of the parties, including the parties' respective oral arguments, in light of the applicable standard of review for the instant motions, the undersigned Hearings Officer orally granted Respondent Ronda Teruya's Motion to Dismiss, or in the Alternative for Summary Judgment, and denied the remaining Respondents' Motions.

Accordingly, the undersigned Hearings Officer recommends that the Commissioner of Securities for the Business Registration Division, Department of Commerce and Consumer Affairs ("Commissioner"), grant Respondent Ronda Teruya's Motion to Dismiss, or in the Alternative for Summary Judgment.

¹ Although entitled "Motion to Dismiss, or in the Alternative for Summary Judgment," Respondents cited the provisions of Hawai'i Rules of Civil Procedure ("HRCPP"), Rule 12, regarding Motions for Judgment on the Pleadings. However, because there were matters submitted by the parties that were outside the initial pleadings, the proceedings were treated as Motions for Summary Judgment pursuant to HRCPP Rule 56.

The undersigned Hearings Officer further recommends that the Commissioner deny the Motions to Dismiss or in the Alternative for Summary Judgment regarding the remaining Respondents.

DATED: Honolulu, Hawai'i, June 3, 2009

A handwritten signature in cursive script, reading "Rodney A. Maile", written over a horizontal line.

RODNEY A. MAILE
Senior Hearings Officer
Department of Commerce
and Consumer Affairs

