BUSINESS REGISTRATION DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
STATE OF HAWAII

In the Matter of:	)	Case No. SEU-2004-072
	)	
	)	COMMISSIONER'S FINAL
LEIGH K. MATSUYOSHI and	)	ORDER AS TO RESPONDENTS
L.K. MATSUYOSHI, INC.,	)	LEIGH K. MATSUYOSHI and
	)	L.K. MATSUYOSHI, INC.
Respondents.	)	
	)	

COMMISSIONER'S FINAL ORDER AS TO RESPONDENTS
LEIGH K. MATSUYOSHI and L.K. MATSUYOSHI, INC.

On or about October 20, 2010, the duly appointed Hearings Officer submitted his Findings of Fact, Conclusions of Law and Recommended Order (together, the "Recommended Order") as to Respondents Leigh K. Matsuyoshi ("Respondent Matsuyoshi") and L.K. Matsuyoshi, Inc. ("Respondent LKM" and together with Respondent Matsuyoshi, the "Respondents") in the above-captioned matter to the Commissioner of Securities, Department of Commerce and Consumer Affairs ("Commissioner"). Copies of the Hearings Officer's Recommended Order were also transmitted to the parties. Respondents submitted their Written Exceptions to the Findings of Facts and Conclusions of Law dated October 23, 2010.

After review of the entire record of the proceedings, including, but not limited to, the Respondents' exceptions to, and the Securities Enforcement Branch's ("Petitioner") memorandum in support of, the Hearings Officer's Recommended Order, the Commissioner affirms the Hearing Officer's Recommended Order in part and reverses in part. The Commissioner affirms that the preponderance of the evidence established

that Respondents violated Hawaii Revised Statues ("HRS") §§ 485-8 and 485-25(a)(1), (2) and (3) of the Uniform Securities Act (the "Act"). The Commissioner also affirms that Respondent Matsuyoshi violated § 485-14, HRS, but reverses the Hearing Officer's Recommended Order for a similar conclusion regarding Respondent LKM. In addition, the Commissioner finds exceptions to the Hearing Officer's Recommended Order's findings of facts and conclusions of law as set forth below.

The Commissioner hereby renders the following findings of fact, conclusions of law and final order.

FINDINGS OF FACT

1. From May 1, 1992 to June 19, 2000, Respondent Matsuyoshi was a registered salesperson at Paulson Investment Company ("Paulson").
2. While at Paulson, Respondent Matsuyoshi's clients included Ray Ishihara, Shizue Takaki, and Miyuki Hirashima who each became investors to Respondent Matsuyoshi's subsequent enterprise (each, an "Investor" and together, the "Investors").
3. Shizuie Takaki and Miyuki Hirashima were both over 70 years old at the time they invested in Respondent Matsuyoshi's new enterprise.
4. All three Investors were long-term clients of Respondent Matsuyoshi at Paulson and had established professional relationships of trust and reliance with Respondent Matsuyoshi.

5. Respondent Matsuyoshi incorporated the corporation L.K. Matsuyoshi, Inc. on June 7, 2000, to invest in stocks.

6. From 2000 through 2004, Respondent Matsuyoshi was the sole director, president, vice-president, treasurer, registered agent, manager and only employee of the corporation and had full and sole control of the company.

7. Beginning in June 2000, Respondents offered and sold stock purchase agreements to each of the three Investors who had their accounts closed at Paulson to join Respondents.

8. Each investor was induced to invest by expectations of high returns, and entered into the contract with Respondents knowing their investments were subject to the success of the enterprise and were wholly subject to Respondent Matsuyoshi's control of the enterprise.

9. Beginning in June 2000, Respondents obtained checks from the Investors in connection with their purchase of the stock purchase agreements.

10. The stock purchase agreements sold by Respondents to the Investors were administered under the direction and control of Respondents.

11. Each stock purchase agreement mentions a salary of 7 percent of the corporation's total equity per month for "management." The monthly salary is equal to 84 percent of the corporate equity per annum.

12. The stock purchase agreements do not disclose a justification or detailed explanation for such an unusually high management fee for investments or that similar investment management services would be available at a more customary market rate of 3% of assets under management per annum or lower. Even if the Investors checked out the management fee with other professionals, the extreme variation from industry norms would require detailed explanation in its disclosure and justification.

13. From 2000 through 2004, the corporate public filings of Respondent LKM as filed and signed by Respondent Matsuyoshi show the corporation had issued no shares of Class A Common Stock and only 100 shares of Class B Common Stock.

14. Respondents did not tell the Investors that no shares of Class A Common Stock were recorded in the corporate filings and instead told Investors the company had issued them the following amount of shares in 2000:

    i. Hirashima 295,840.50 shares

    ii. Ishihara 368,021.58 shares

    iii. Takaki 366,314.03 shares

INVESTOR ISHIHARA

15. In 1994, Ishihara became a client of Respondent Matsuyoshi's while she worked for Paulson.

16. In 2000, Respondent Matsuyoshi informed Ishihara that Respondent Matsuyoshi was leaving Paulson to open up her own firm.

17. Ishihara closed his Paulson account and moved his funds to Respondent LKM. Ishihara invested $368,021.58 for the purchase of two stock purchase agreements.

18. Ishihara's payment of $368,021.58 was induced by Respondent Matsuyoshi's actions which included making the investment appear exclusive by telling Ishihara that investing in Respondent Matsuyoshi's new enterprise was not available to him and only available to "bigger clients" when in reality Respondent Matsuyoshi knew that Ishihara had as much or more in investments as the other clients. It also included Respondent Matsuyoshi's explanation that her new enterprise would allow her to be faster and more efficient.

19. Ishihara expected Respondent Matsuyoshi's management of his account to be the same as her management of his Paulson account.

20. Ishihara invested because he believed Respondent Matsuyoshi would do well based on her past performance at Paulson.

21. Respondents omitted to explain to Ishihara that past performance would not guarantee future performance at the new enterprise and did not explain to Ishihara in any meaningful way how the new enterprise would be different from and more risky than Paulson.

22. Ishihara closed out his account with Respondents in June 2002 when he received two checks totaling $48,759.78.

23. Due to Respondents actions, Ishihara lost $319,261.80.

INVESTOR HIRASHIMA

24. In 1992, Miyuki Hirashima became a client of Respondent Matsuyoshi while Respondent Matsuyoshi was employed as a salesperson at Paulson.

25. Prior to June 2000, Respondent Matsuyoshi informed Hirashima that Respondent Matsuyoshi was leaving Paulson to open up her own firm.

26. Hirashima believed Respondent Matsuyoshi would do well based on her past performance at Paulson.

27. Respondents omitted to explain to Hirashima that past performance would not guarantee future performance.

28. Hirashima decided to close up her Paulson account and invest in Respondent LKM.

29. Hirashima expected Respondent Matsuyoshi's management of her account to be the same as her management of her Paulson account.

30. Respondents failed to explain to Hirashima the difference between the new enterprise and Paulson, offering only a one page stock purchase agreement with no clear explanation of the differences and increased risks despite the fact that Hirashima had been a client of Respondent

Matsuyoshi's for 8 years, was over 70 years old and had a relationship of trust with Respondent Matsuyoshi.

31. Hirashima closed her account at Paulson and received a check for $295,940.50 which she deposited into her American Savings Account.

32. A few days after depositing her check, Hirashima entered into a stock purchase agreement with Respondents. Respondent Matsuyoshi informed Hirashima that she was purchasing 295,840.5 shares of Class A Common Stock in Respondent LKM for which she would receive stock certificates.

33. After entering into the stock purchase agreement, Hirashima provided Respondents with her investment check in the sum of $295,840.50.

34. Hirashima did not receive statements, confirmation or phone calls from Respondents and never received stock certificates, nor was she told that Respondent LKM's corporate filings indicated that no Class A Common Stock had been issued.

35. On or about August 2004, Hirashima asked Respondent Matsuyoshi for some of her funds in order to purchase a car. Hirashima was informed that her account lacked sufficient funds. Shortly after that conversation, Hirashima received a final account statement and a check for $8,893.00.

36. As a result of Respondents actions, Hirashima lost $286,947.50.

37. Hirashima was 79 years old at the time.

INVESTOR TAKAKI

38. In 1995, Shizue Takaki became a client of Respondent Matsuyoshi while Respondent Matsuyoshi was employed as a salesperson at Paulson.

39. In or around June 2000, Respondent Matsuyoshi, without Takaki's knowledge, closed Takaki's account at Paulson and moved her investments to Respondent LKM. Respondent Matsuyoshi did not inform Takaki of her plans to leave Paulson in order to open Respondent LKM.

40. Sometime after June 2000, Respondent Matsuyoshi told Takaki that her money was now invested in Respondent LKM. Because Takaki had a long-standing professional trust relationship with Respondent Matsuyoshi, she decided to leave her money in Respondent LKM.

41. Takaki believed Respondent Matsuyoshi would do well based on her past performance at Paulson.

42. Respondents omitted to explain to Takaki that past performance would not guarantee future performance at the new enterprise and failed to explain the differences, including risks, between the new enterprise and Paulson.

43. Sometime after June 2000, Respondents had Takaki sign a one-page stock purchase agreement that did not include any disclosure explaining the difference between a brokerage account at Paulson and the new enterprise, despite the fact that Takaki had been a client of Respondent

Matsuyoshi's for five years, had trusted Respondent Matsuyoshi as her professional representative during that time, and was over 70 years old.

44. Takaki invested $366,314.03 with Respondents for the purchase of the stock purchase agreement. Even though Takaki felt the monthly fee was excessive, she left her money in Respondent LKM with the expectation that Respondent Matsuyoshi would perform as she had at Paulson.

45. Takaki did not receive any statements or stock certificates, nor did she receive information that Respondent LKM's corporate filings indicated no shares of Class A Common Stock had been issued.

46. Between June and October 2000, Takaki asked Respondent Matsuyoshi to return her money. Respondent Matsuyoshi became upset and yelled at Takaki. Respondent Matsuyoshi told Takaki not to bother her, that she knew what she was doing and told Takaki to leave the money invested with Respondents.

47. On or about October 6, 2000, Takaki received three checks from Respondent Matsuyoshi totaling $351,000.00.

48. Takaki lost $15,314.30.

49. At that time, Takaki was 80 years old.

50. Respondent Matsuyoshi had longstanding relationships with all three Investors as their broker-dealer salesperson at Paulson where she generated a successful return on investments and she was aware of their reliance on her and the trust built over the years. Based on this

longstanding professional relationship of trust, she knew or should have known that the Investors were laypeople, not professionals. They would not have the legal and technical professional background to know what a brokerage firm was as compared to what she promised them in the new enterprise.

51. Respondents omitted to clearly explain to the Investors how their relationship would change under the new enterprise and the increased risks involved.

52. Respondents omitted to explain that the Investors should not expect the same return on their investment that Respondent Matsuyoshi created for them in the past at Paulson, such that each Investor believed the new enterprise would give them a return on their investment that was higher than their original investment amount. They were induced to invest based on this misunderstanding that Respondents continued to encourage. Even in Respondents' own closing arguments, Respondents used the "stellar" past performance as the justification for why the Investors agreed to the 7% per month compensation, suggesting that Respondents encouraged the Investors to rely on past performance to indicate future performance.

53. The Investors' funds were fully at risk of the Respondents' enterprise in which the Investors had no practical control. The enterprise was fully and solely controlled by Respondent Matsuyoshi.

54. The money of the three Investors were initially deposited in the business account of the company that was held at Charles Schwab.

55. As clearly stated in testimony by Respondent Matsuyoshi, the total Charles Schwab business account value was the value of Respondent LKM, the company.

56. For the first month and a half of the company before any trades were made, the total corporate equity value of the company was the amount the Investors put in.

57. The renumeration to Respondent Matsuyoshi was set forth in the purchase agreements as 7% of the corporate equity value of the company per month.

58. Respondent Matsuyoshi's salary was directly keyed off the amount of investment Respondent Matsuyoshi brought to the company, 7% of the initial investment of the investors.

59. After trades were made, Respondent Matsuyoshi's compensation remained 7% of corporate equity of the company which essentially was 7% of the value of the invested funds. Her compensation for managing the company's assets was part of the ongoing monthly 7% of the assets under management.

60. Respondent Matsuyoshi wrote checks from the corporate accounts directly to her credit cards and creditors.

61. Respondents omitted to tell the Investors that Respondent Matsuyoshi would be using the investment funds as a personal account from which she would write her own personal checks.

62. Respondents at no time told Investors that the stock purchase agreements were securities that had to be registered under state securities laws and were not exempt from registration.

63. Respondents at no time told Investors that Respondent Matsuyoshi had to be registered as a broker-dealer salesperson to solicit and sell the stock purchase agreements and that she was not registered.

64. Respondents at no time told Investors that Respondent Matusyoshi had to be registered as an investment adviser and/or an investment adviser representative to manage the investments of Respondent LKM and direct the investment of that portfolio in the Charles Schwab brokerage account.

65. The Respondents made untrue statements of material fact or omitted to state a material fact necessary in order to make the statements made, in light of circumstances under which they were made, not misleading in connection with the offer, sale or purchase of the stock purchase agreements:

    a. Respondent Matsuyoshi acted in a manner that conveyed that she would manage investments for the Investors through the company, Respondent LKM; and that she would be getting renumeration based on the performance of her management of investments held

by the company. Although she put herself out in this manner, at no point did she register with the Office of the Commissioner;

b. Respondents omitted to clearly explain to the Investors the change in investment relationships. Respondent Matsuyoshi knew that at least two of the Investors were in their 70's and all of them were lay people who had relied on Respondent Matsuyoshi as their broker-dealer salesperson for years. When she induced them to leave Paulson and become investors in Respondent LKM, Respondents omitted to explain to them that they would not have the same care and service they had at Paulson and did not explain the risks involved;

c. Respondents omitted to tell the Investors that they should not rely on Respondent Matsuyoshi's past performance as indicative of future performance;

d. Respondents told the Investors that their investment monies would purchase Class A Common Stock of Respondent LKM and that they would be issued over one million shares, but no certificates were issued. Respondents failed to tell Investors that Respondent LKM's own corporate business registration filings from 2000 to 2004 indicated no shares of Class A Common Stock were issued;

e. Respondents set forth the redemption process in the Stock Purchase Agreement as redeemable on demand within the next

business day, but the record shows that Investors' requests for redemption were delayed or denied;

f. Respondents omitted to explain how the redemption process worked. Since the records show that Respondent Matsuyoshi could not understand the calculations herself, it would be impossible for her to have accurately explained it to the Investors;

g. Respondents omitted to explain in detail the justification for the 84% per annum compensation and omitted alerting purchasers that the compensation was markedly higher than standard customary compensation that usually does not exceed 3% per annum. Even if the Investors checked it out themselves with a CPA, the failure to disclose the context of compensation that exceeds the norm to such a marked degree would have had a material effect on the misleading nature of the "salary."

h. Respondents failed to disclose that the stock purchase agreements were "securities" that were required to be registered with the Office of the Commissioner and were not registered or exempt;

i. Respondents failed to disclose that Respondent Matsuyoshi, as the one who made decisions on investments and whose salary was keyed to the management of the assets under management, acted as an investment adviser and/or investment adviser representative to the company; was required to be registered with the Office of the

Commissioner; was not registered and was not exempt from registration;

j. Respondents failed to disclose that Respondent Matsuyoshi in her solicitation of, and sale of shares of the company to, the Investors was required to be registered with the Office of the Commissioner to transact securities, was not registered as a securities salesperson and was not exempt from registration;

k. Respondents failed to disclose information to the Investors as to where, in what or how their money would actually be invested;

l. Respondents failed to disclose to the Investors that Respondent Matsuyoshi would treat the investors' funds as a personal account. Respondents failed to disclose that approximately $486,000.00 of investor monies would be used to pay Respondent Matsuyoshi's personal expenses, not as salary checks written to Respondent Matsuyoshi, but rather as a direct account from which Respondent Matsuyoshi would write checks out to credit cards and other creditors.

CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Commissioner intends that every such conclusion of law shall be construed as a finding of fact.

A. Stock Purchase Agreement as Securities.

There is no dispute that the stock purchase agreements sold by Respondents to the Investors constituted "securities" under the Act. Petitioner argues that the stock purchase agreements were investment contracts. Respondents argue that the stock purchase agreements were for shares of stock that would automatically fall under the definition of "securities" within the Act and therefore, would not need to be evaluated under an investment contracts test. In relevant part, both parties agree that the investment vehicles in question are "securities" within the Act and the Commissioner agrees. On this issue, we need look no further.

B. Securities Exemption.

Generally, securities are required to be registered under the Act unless an exemption applies. The pertinent question then appears to be whether there was an available exemption from registration of these securities. In this case, Respondents have contended that the transactions are exempt from registration under HRS § 485-6(9). HRS § 485-6(9) reads in relevant part:

§ 485-6(9) Exempt Transactions.

(9) Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:

(A) There are no more than twenty-five offerees, wherever located (other than those designated in pargraph (8)) during any twelve consecutive months;

(B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;

(C) No commission, discount, or other renumeration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and

(D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium.

In order for the exemption to apply, all four elements of the test must be met. Neither party has disputed three of the elements: (A), (B) and (D), leaving in dispute only element (C), the question of renumeration for solicitation. The exemption, then, turns on whether Respondent Matsuyoshi received any form of renumeration directly or indirectly for the solicitation of the securities.

Respondents argue that the 7% of the corporate equity to be paid to Respondent Matsuyoshi each month was a management fee, wholly separate from Respondent Matsuyoshi's solicitation and sales of the securities. They basically argue that the corporation employed her and paid the fee for investment management of the portfolio to Respondent Matsuyoshi, the manager of investments, and the "salary" cannot be attributed to Respondent Matsuyoshi, the salesperson. Therefore, they conclude that Respondent Matsuyoshi, the salesperson, never received commission, discount, or other renumeration, directly or indirectly, for soliciting the Investors and bringing in their money to the company. That salary was for Respondent Matsuyoshi, the manager of investments, someone entirely different than Respondent Matsuyoshi, the salesperson.

In the case before us, the undisputed facts are that Respondent Matsuyoshi's compensation was directly keyed to the Investors' investments. The "salary" was stated as a percentage of the corporate equity and Respondent Matsuyoshi testified that the corporate equity was the same thing as the Investors investments. So for all intents and purposes, her "salary" was a percentage of investments she solicited and brought to the company, making the salary at least indirect, if not direct, renumeration for her efforts in successfully soliciting the Investors.

The question then is, can Respondent Matsuyoshi, the salesperson, disclaim the compensation as belonging to Respondent Matsuyoshi, the manager of investments, protected under the veil of the corporate structure?

It is well-established in Hawaii jurisprudence that where an individual acts in every role of a corporation, she is the alter ego of the corporation and the fiction of recognizing the corporation as a distinct entity may be disregarded to prevent injustice and inequity. *Kalihi, Inc. v. Yamamoto, 54 Haw. 267, 271-2, 506 P.2d 9, 12 (1973).* Essentially, such a corporation should be disregarded for the purpose of stopping the individual from circumventing the laws of justice.

In the case before us, there could not be a thinner corporate veil to pierce. The facts are undisputed that Respondent Matsuyoshi held every role in the corporation, from incorporator, to agent, to president, vice-president, secretary, treasurer, sole director, manager, sole employee. She was responsible for the sales and solicitation of the shares of the company to the Investors and she controlled the investment of all the funds that came in from those same investors. The corporate veil was so thin that

Respondent Matsuyoshi herself testified the Investors' funds were identical to the "corporate equity." In this case, to allow Respondents to use their corporate veil to protect themselves from the consequences of their own schemes would bring about injustice and inequity.

Moreover, the "salary" for management of investments of 7% of assets under management per month would amount to 84% per year, a compensation so high and out of norm, that it is more than likely by the preponderance of the evidence that the compensation conflated salesperson and investment adviser and/or investment adviser representative renumeration into one. The fact that Respondent Matusyoshi structured the entire enterprise around herself in every role supports that conclusion as well.

Piercing through the corporate veil, the Commissioner concludes Respondent Matsuyoshi's "salary" was keyed off of the 7% of the amount of investments she solicited on behalf of the company and constitutes in part renumeration for solicitation of the securities. Accordingly, Respondents have failed to prove they have met element (C) and the securities do not qualify for the exemption under HRS § 485-6(9).

C. Securities Registration.

The preponderance of the evidence established that Respondents offered to sell and sold securities to Hawaii residents in June 2000 through the stock purchase agreements. The evidence further established that these securities were not registered with the Commissioner and were not exempt from registration. Therefore, Respondents violated HRS § 485-8.

D. Salesperson, Dealer, Investment Adviser and Investment Adviser Representative Registration.

The preponderance of the evidence established Respondent Matsuyoshi acted as a securities salesperson subject to registration in the solicitation and sale of the securities to the Investors.

Respondent Matsuyoshi's active involvement in the sale of the stock purchase agreements through her solicitation and sale constitute the transaction of business involving securities in Hawaii. Respondent Matsuyoshi acted as a securities salesperson within the meaning of HRS § 485-1(2). Respondent Matsuyoshi was not a duly registered securities salesperson and was not exempt from registration in violation of HRS § 485-14.

Furthermore, Respondent Matsuyoshi's "salary" was also in part renumeration for the management of the portfolio. Respondent Matsuyoshi testified that the salary was for her investment decisions of the funds that she alone exercised. As a percentage of assets under management, it is clearly keyed off of Respondent Matsuyoshi's management performance.

Respondent Matsuyoshi attempted to conflate both her salesperson and investment adviser and/or investment adviser representative renumeration in order to shield part of her compensation and circumvent her responsibilities to be properly registered with the Commissioner. But the fact that the compensation is keyed to her performance in investing the assets under management, the fact that the compensation is shockingly beyond the norm with no detailed explanation or justification such that it

appears to be a combined compensation, and the fact that she played every role in this tangled web, can lead to no other reasonable conclusion but that the compensation must be properly disentangled and ascribed to multiple purposes under the securities laws.

Accordingly, it is further concluded that Respondent Matsuyoshi acted as an investment adviser and/or investment adviser representative and received compensation based on the assets under management. Respondent Matsuyoshi was not a duly registered investment adviser or investment adviser representative, was not exempt from registration, and therefore, was in violation of HRS § 485-14.

E. Securities Fraud.

The preponderance of the evidence established that Respondents engaged in fraudulent practices in violation of HRS § 485-25(a)(1), (2), and (3). HRS § 485-25 provides in relevant part:

> **§ 485-25 Fraudulent and other prohibited practices.** (a) It is unlawful for any person, in connection with the offer, sale or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly:
>
> (1) To employ any device, scheme, or artifice to defraud;
>
> (2) To make any untrue statement of material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

The foregoing provisions mirror portions of the fraud provisions of Section 17(a) of the Securities Exchange Act of 1933. Interpretation of Hawaii fraud provisions should be interpreted, where similar, in the same manner as the federal courts and the Securities and Exchange Commission have interpreted the federal counterpart.

The requirement for "scienter" in subsection (a)(1) of HRS § 485-25 may be satisfied by a showing of a reckless disregard for the truth. It is not necessary to find that a misrepresentation or omission of material fact was made willfully or maliciously in order to conclude that a violation of HRS § 485-25(a)(1) has occurred. Such a violation will be sustained if the misrepresentation or omission was made recklessly. Proof of such recklessness may be based upon inferences from circumstantial evidence. *See Securities & Exchange Commission v. Burns, 816 F.2d 471 (9th Cir. 1987). See also, T.S.C. Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976).*

The Commissioner finds that Respondents induced the Investors to invest in their stock purchase agreements by leading them to believe that their investments would be handled in the same manner as when they had been clients of Respondent Matsuyoshi while she was at Paulson. Respondents omitted to clarify the differences in lay terms to the Investors and omitted to explain the risks involved in the new enterprise. Moreover, Respondents relied on Respondent Matsuyoshi's long-term professional trust relationships with each of the Investors and encouraged them to believe that her past

performances would indicate future performances. Respondents used this misperception to induce the Investors to agree to a compensation of 84% of the investors funds per annum, a percentage far beyond industry customary standards. Respondents omitted to disclose the extreme variation of the compensation schedule from industry norms and failed to justify or explain the compensation. Respondents failed to explain other material provisions of the stock purchase agreement, including the redemption provisions. Based on this record, the Commissioner concludes that Respondents had the required reckless disregard of the truth in violation of HRS § 485-25(a)(1).

A violation of HRS §§ 485-25(a)(2) and (a)(3) occurs when there is any untrue statement of a material fact or any omission to state a material fact. A fact is considered material for purposes of Hawaii securities laws "if there is substantial likelihood that its disclosure would have been considered significant by [a] reasonable investor." *See, e.g., Basic Inc. v. Levinson, 485 U.S. 224, 231, 108 S. Ct. 978,983, 99 L.Ed.2d 194(1988). As with Sections 17(a)(2) and (a)(3) of the Securities Exchange Act of 1933, scienter is not required. See, e.g. Aaron v. Securities & Exchange Commission, 100 S.Ct. 1945 (1980); Securities & Exchange Commission v. Murphy, 626 F.2d 633 (9th Cir. 1980); and Securities & Exchange Commission v. Blazon Corp., 609 F.2d 960, 965 (9th Cir. 1979).*

As set forth in paragraph 65 of the findings of fact herein, which include, but are not limited to, misrepresentations and omissions regarding material provisions of the

securities, solicitation of the securities, investment advising, registration, personal use of investment accounts and more, Respondents made numerous untrue statements of material facts and omitted to state material facts necessary to make statements made not misleading in light of the circumstances in which they were made. The Commissioner concludes Respondents engaged in acts and practices which operated as a fraud upon the Investors, in violation of HRS §§ 485-25(a)(2) and (3).

ORDER

For the reasons set forth above, the Commissioner finds and concludes that the preponderance of the evidence established that Respondents violated HRS §§ 485-8 and 485-25(a)(1),(2) and (3) of the Act and Respondent Matsuyoshi violated HRS § 485-14 of the Act. The Commissioner sets forth the sanctions as follows:

It is hereby ordered that:

(1) Respondents shall cease and desist from making any offer to sell, solicitation to purchase, sale of, and/or transfer of the above-described securities, or any other security, within, to or from the State of Hawaii;

(2) All contracts regarding the purchase or sale of the aforesaid securities by Respondents to the Investors or any similarly situated investors are hereby rescinded at the option of said investors. If rescission is or has been selected, then Respondents, jointly and severally, shall refund to said investors all monies or other compensation paid, plus interest on the amounts of monies or other compensation calculated at the same rate of ten percent (10%) per annum from the date of the investment to the date

of the refund payment until finally paid, minus amounts already paid to said investors. This payment shall be made within thirty (30) days of the date of this final order (the "Final Order"). Proof of said payments to investors who have elected to rescind shall be provided to the Securities Enforcement Branch within forty-five (45) days of the date of the Final Order. If an investor elects not to rescind the transaction, then the investor must so indicate in writing that the investor has not elected to exercise such right;

(3) Respondents shall be jointly and severally liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division an administrative penalty in the sum of five hundred thousand and no/100 dollars ($500,000.00) plus interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from the date of the Final Order until finally paid. Payment of this administrative penalty shall be made by cashier's check or certified check made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and received by the Commissioner within thirty (30) days of the date of the Final Order;

(4) Respondents are permanently barred as securities agents, securities broker-dealers, investment advisers or investment adviser representatives from the date of the Final Order and from applying for registration in the State of Hawaii as securities agents, securities broker-dealers, investment advisers or investment adviser representatives from the date of the Final Order;

(5) Each Respondent shall be subject to a civil penalty of up to fifty thousand and no/100 dollars ($50,000.00) for each violation, if Respondent knowingly violates any order of the Commissioner, pursuant to § 485A-604, HRS;

(6) The imposition of the Final Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for violations of the Act.

Dated: Honolulu, Hawaii, FEB - 3 2012.

TUNG CHAN
COMMISSIONER OF SECURITIES
STATE OF HAWAII

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

In the Matter of:	)	SEU-2004-072
	)	
LEIGH K. MATSUYOSHI,	)	HEARINGS OFFICER'S
and L.K. MATSUYOSHI,	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondents.	)	AND RECOMMENDED
	)	ORDER
	)	

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

I. INTRODUCTION

On August 14, 2009, the Commissioner of Securities, Department of Commerce and Consumer Affairs ("Commissioner"), issued a Preliminary Order to Cease and Desist and Notice of Right to Hearing against Respondents Leigh K. Matsuyoshi and L.K. Matsuyoshi, Inc.

By letter dated September 14, 2009, the named Respondents, by and through their attorneys, filed a written request for hearing pursuant to the provisions of Hawaii Revised Statutes ("HRS") §485-18.7. The matter was set for hearing, and the notice of hearing and pre-hearing conference was transmitted to the parties.

The hearing in the above-captioned matter was convened by the undersigned Hearings Officer in accordance with HRS Chapters 91, 92 and 485 on October 22, 2009 and continued and concluded on March 16, 2010. Rebecca Quinn, Esq. appeared for Petitioner

Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii ("Petitioner"); Nathan W.S. Choi, Esq. appeared on behalf of Respondents Leigh K. Matsuyoshi and L.K. Matsuyoshi, Inc. ("Respondents").

At the close of the hearing, the parties were directed to file written closing arguments and proposed findings of fact and conclusions of law. Petitioner filed its argument on March 31, 2010; Respondents filed their closing arguments on April 8, 2010; and Petitioner filed a rebuttal brief on April 15, 2010. Both parties submitted its/their proposed findings of fact and conclusions of law on April 22, 2010.

Having reviewed and considered the evidence and argument 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

The proposed findings of fact and conclusions of law filed by the parties have been considered. To the extent that the proposed findings and conclusions are in accordance with the findings and conclusions stated herein, they have been accepted, and to the extent that they are inconsistent, they have been rejected. Certain proposed findings and conclusions have been omitted as the Hearings Officer determined them to be irrelevant to a proper determination of the material issues presented.

1. From May 1, 1992 to June 19, 2000, Respondent Matsuyoshi was a registered representative of Paulson Investment Company ("Paulson").

2. While at Paulson, Respondent Matsuyoshi's clients included Ray Ishihara, Shizue Takaki, and Miyuki Hirashima ("Investors").

3. From June 7, 2000 through November 30, 2004, Respondent Matsuyoshi was the president, vice-president, secretary and treasurer of Respondent L.K. Matsuyoshi, Inc. ("LKM").

4. Beginning in June 2000, Respondents offered and/or sold stock purchase agreements to the Investors.

5. The stock purchase agreements sold by Respondents to the Investors were administered under the direction and control of Respondents.

6. Beginning in June 2000, Respondents obtained checks from the Investors in connection with their purchase of the stock purchase agreements.

7. In June 2000, Respondents offered and/or sold two stock purchase agreements to Ray Ishihara.

8. Ishihara invested $368,021.58 with Respondents for the purchase of the two stock purchase agreements.

9. Ishihara's payment of $368,021.58 was induced by Respondent Matsuyoshi's promises and representations that a valuable benefit of some kind, income or profit, would result from the payment's employment through Respondents' efforts.

10. Respondent Matsuyoshi offered Ishihara a return on his investment that was higher than his original investment amount.

11. Ishihara's initial payment was subject to the risks of Respondents' investment scheme and all or some of Ishihara's initial payments were put at risk in the event that Respondents investment scheme failed or Respondents failed to follow through.

12. Ishihara had no practical control over the managerial decisions and operations of Respondents' investment scheme.

13. In 1992, Miyuki Hirashima became a client of Respondent Matsuyoshi while she was employed as an account representative at Paulson.

14. Prior to June 2000, Respondent Matsuyoshi informed Hirashima that she was leaving Paulson to open up her own firm. Hirashima believed Respondent Matsuyoshi would do well based on her performance at Paulson.

15. In June 2000, Hirashima was 75 years old.

16. Hirashima decided to close up her Paulson account and invest in Respondent LKM.

17. Hirashima expected Respondent Matsuyoshi's management of her account to be the same as her management of her Paulson account.

18. Hirashima closed her account at Paulson and received a check for $295,840.50 which she deposited into her American Savings Account.

19. A few days after depositing her check, Hirashima entered into a stock purchase agreement with Respondents. Respondent Matsuyoshi informed Hirashima that she was purchasing 295,840.5 shares of Class A Common Stock in Respondent LKM for which she would receive stock certificates. Hirashima believed that the stock purchase agreements would allow Respondents to continue making investment decisions for her.

20. After entering into the stock purchase agreement, Hirashima provided Respondents with her investment check in the sum of $295,840.50.

21. Hirashima believed that she could sell back the stock she was purchasing to Respondent LKM and that Respondent LKM was obligated to buy it back.

22. Hirashima was unaware how her funds were being invested by Respondents between June 2000 and August 2004.

23. Respondents did not inform Hirashima that her funds would be pooled together with those of other investors and used to open a self-directed brokerage account at Charles Schwab.

24. Hirashima expected that her returns would more than exceed Respondent Matsuyoshi's 7% monthly fee.

25. Hirashima did not receive monthly statements, confirmations, or phone calls from Respondents. Respondents never provided Hirashima with any stock certificates.

26. On or about August 2004, Hirashima asked Respondent Matsuyoshi for some of her funds in order to purchase a car. Hirashima was informed that her account lacked sufficient funds. Shortly after that conversation, Hirashima received a final account statement and a check for $8,893.00 from Respondents.

27. At no time was Hirashima told by Respondents that her stock purchase agreement was a "security".

28. At no time was Hirashima told by Respondents that the stock purchase agreement had to be but had not been registered with the Department of Commerce and Consumer Affairs.

29. Hirashima was not informed by Respondents that her funds would be used to pay Respondent Matsuyoshi's personal expenses.

30. As a result of Respondents actions, Hirashima lost approximately $286,947.50.

31. In 1995, Shizue Takaki became a client of Respondent Matsuyoshi while she was employed as an account representative at Paulson.

32. In or around June 2000, Respondent Matsuyoshi, without Takaki's knowledge, closed Takaki's account at Paulson and moved her investment funds to Respondent LKM. Respondent Matsuyoshi did not inform Takaki of her plans to leave Paulson in order to open Respondent LKM.

33. Sometime after June 2000, Respondent Matsuyoshi told Takaki that her money was now invested in Respondent LKM. Because Takaki trusted Respondent Matsuyoshi, she decided to leave her money in Respondent LKM.

34. Sometime after June 2000, Respondent Matsuyoshi had Takaki sign a stock purchase agreement which allowed Respondents to keep making investment decisions for Takaki. Under the terms of the stock purchase agreement, Respondent Matsuyoshi was charging a 7% monthly fee.

35. Takaki invested $366,314.03 with Respondents for the purchase of the stock purchase agreement.

36. Even though Takaki felt the 7% monthly fee was excessive, she left her money invested in Respondent LKM with the expectation of making a profit on her investment.

37. Takaki never received any documentation from Respondents regarding her investment in LKM stock. There were no brochures, literature or statements of any kind. Takaki never received any prospectus or stock certificates.

38. Between June and October 2000, Takaki asked Respondent Matsuyoshi to return her money. Respondent Matsuyoshi became upset and yelled at Takaki. Respondent Matsuyoshi told Takaki not to bother her, that she knew what she was doing, and told Takaki to leave the money invested in Respondent LKM.

39. On or about October 6, 2000, Takaki received three checks from Respondent Matsuyoshi totaling $351,000.00.

40. Takaki was unaware how her funds were being invested by Respondents between June 2000 and October 2000.

41. Respondents did not inform Takaki that her funds would be pooled together with those of other investors and used to open a self-directed brokerage account at Charles Schwab.

42. At no time was Takaki told by Respondents that the stock purchase agreement she had purchased was a "security".

43. At no time was Takaki told by Respondents that the stock purchase agreement had to be but was not registered with the Department of Commerce and Consumer Affairs.

44. Takaki was not informed by Respondents that her funds would be used to pay Respondent Matsuyoshi's personal expenses.

45. Respondents' stock purchase agreements were not registered with the Commissioner.

46. Respondents made untrue statements of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of circumstances under which they were made, not misleading in connection with the offer, sale or purchase of the stock purchase agreements:

a. Respondent Matsuyoshi acted in a manner that conveyed that she had the ability to manage investments for the Investors because she was forming her own investment company, Respondent LKM. Although she acted in this manner, at no point did she register with the Office of the Commissioner;

b. Respondent Matsuyoshi told the Investors that their investment monies would purchase class A Common Stock of Respondent LKM;

c. Respondent Matsuyoshi told the Investors that purchase of Respondent LKM stock would generate funds that would be used to purchase common stocks and bonds of public corporations, treasuries, options, and other investment vehicles;

d. Respondent Matsuyoshi told the Investors that their shares of Respondent LKM stock could be sold back to Respondent LKM and that Respondent LKM had an "obligation" of buying back their outstanding class A common stock upon demand;

e. Respondent Matsuyoshi described the redemption process to the Investors as follows: the price of their stock upon repurchase would be equal to the equity valuation (assets of the corporation less any liabilities of the corporation such as margin requirements) of the corporation divided by the outstanding number of class A shares and that the valuation of Respondent LKM's equity would be determined as of the close of the New York Stock Exchange one day after it is known that the investor wished to sell back their stock which would allow Respondent LKM time to sell off any LKM investments to meet the cash demands of the Hawaii investors in the repurchase of their stock;

f. Respondent Matsuyoshi told the Investors that common stock in Respondent LKM would be issued to them; however, no stock certificates were ever issued by Respondents;

g. Respondents failed to disclose that the stock purchase agreements were "securities" that were required to be registered with the Office of the Commissioner and were not registered or exempt from registration;

h. Respondents failed to disclose that Respondent LKM, as an investment company, was required to be registered with the Office of the Commissioner to transact securities as an investment adviser and was not registered and was not exempt from registration;

i. Respondents failed to disclose that Respondent Matsuyoshi was required to be registered with the Office of the Commissioner to transact securities and was not registered as a securities salesperson and/or investment adviser representative and was not exempt from registration;

j. Respondents failed to disclose information to the Investors as to where, in what, or how their investment monies would actually be invested;

k. Respondents failed to disclose to the Investors that Respondents would "pool" their investment monies and place the monies into a self directed LKM business brokerage account at Charles Schwab totaling $1,030,176.11; and

l. Respondents failed to disclose to the Investors that approximately $486,000.00 of investor monies would be used to pay Respondent Matsuyoshi's personal expenses.

III. CONCLUSIONS OF LAW

If any of the following conclusions of law shall be deemed to be findings of fact, the Hearings Officer intends that every such conclusion of law shall be construed as a finding of fact.

Petitioner contends that investments in Respondents' stock purchase agreements were "securities" as defined in the Hawaii Uniform Securities Act (Modified), HRS Chapter 485 ("Act"); that Respondents offered or sold those securities to the Investors; and that in doing so, Respondents committed or engaged in the following violations of the Act:

1. Respondents failed to register said securities in violation of HRS §485-8;

2. Respondents were not registered as securities dealers and/or salesperson in violation of HRS §485-14;

3. Respondents employed devices, schemes, and/or artifices to defraud in violation of HRS §485-25(a)(1);

4. Respondents made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of HRS §485-25(a)(2); and

5. Respondents engaged in acts, practices and/or a course of business which operates or would operate as a fraud or deceit upon a person in violation of HRS §485-25(a)(3).

A. Stock Purchase Agreements As Securities.

In *Hawaii Market Center*, the Hawaii Supreme Court rejected the "restrictive formula" set out in *SEC v. W.J. Howey Co., 328 U.S. 293 (1946)* to test for the existence of an "investment contract." The court held that an investment contract is created whenever the following factors were present:

1. An offeree furnishes initial value to an offeror;

2. A portion of this initial value is subjected to the risks of the enterprise;

3. The furnishing of the initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind, over and above the initial value will accrue to the offeree as a result of the operation of the enterprise; and

4. The offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

Id. at 649.

The court adopted this broad test in recognition of the remedial purpose of the state securities laws in preventing fraud and protecting the public against unsubstantial schemes. The court designed this test to protect the public against both novel forms of investment as well as more conventional forms of investments, and stated that the formula was to be broadly construed for these purposes.

1. Investors furnished initial value to Respondents.

The first element of the *Hawaii Market Center* four-prong test, "an offeree furnishes initial value to an offeror," has been met since investors invested $1,030,176.11 in the stock purchase agreements.

2. A portion of the initial value is subjected to the risks of the enterprise.

The evidence established that any profit that the Investors realized would be dependent on how successful Respondents were at managing their investments. The evidence proved that as early as October 2000, Respondents began to experience substantial losses which established that the Investors' monies were at risk;

> 3. Investors were induced to invest in Respondents' stock purchase agreements based on a reasonable belief that they would receive a valuable benefit beyond the initial value paid.

According to the evidence, the Investors were induced to invest in Respondent LKM because they had already experienced past success as clients of Respondent Matsuyoshi's while she was at Paulson and Respondent Matsuyoshi represented that by going out on her own, she could do things more efficiently than she had done while at Paulson.

4. Investors had no practical or actual control over Respondents' Programs.

The evidence also established that investors received no practical or actual control over the managerial decisions of Respondents LKM or the stock purchase agreements. Thus, the fourth prong of the *Hawaii Market Center* test is satisfied.

Accordingly, Petitioner has shown by a preponderance of the evidence that investments in Respondents' stock purchase agreements constituted "investment contracts" and therefore are deemed "securities" under the Act. As such, these transactions are subject to regulation under the Act.

Respondents, however, contend that the transactions are exempt from registration requirements under HRS § 485-6(9). HRS § 485-6(9) exempts a transaction provided:

> Any transaction pursuant to an offer to sell securities of an issuer, if the transaction is part of an issue which:
>
> (A) There are no more than twenty-five offerees, wherever located (other than those designated in paragraph (8)) during any twelve consecutive months;

(B) The issuer reasonably believes that all purchasers, wherever located, (other than those designated in paragraph (8)), are purchasing for investment;

(C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and

(D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium.

According to the evidence, however, Respondent Matsuyoshi received investment monies as either a commission or other remuneration as established by the 7% "salary" the stock purchase agreements provided for. The 7% "salary" was directly tied to the value of Respondent LKM and the value of Respondent LKM was determined by the value of the stock held which was under the control of Respondent Matsuyoshi as she was the one who chose what stock would be purchased. Therefore, Respondent Matsuyoshi's transactions with the Investors are not exempt transactions under HRS § 485-6(9).

B. Securities Registration.

The preponderance of the evidence established that Respondents offered to sell and sold securities to Hawaii residents in June 2000 through their stock purchase agreements. The evidence further established that these securities were not registered with the Commissioner. Therefore, Respondents violated HRS §485-8.

C. Salesperson and Dealer Registration.

A securities salesperson or dealer must be registered with the Commissioner before transacting securities business in Hawaii under HRS §485-14. Respondents' active involvement in the sale of the stock purchase agreements through their solicitation and sale, constitutes the transaction of business involving securities in Hawaii. In making offers and sales of the stock purchase agreements to Hawaii residents, Respondents acted as securities salespersons or dealers within the meaning of HRS §485-1(2) and (3). According to the evidence, however, Respondents were not duly registered securities salespersons or dealers. Thus, Respondents also violated HRS §485-14.

D. Securities Fraud.

Petitioner has also charged that Respondents engaged in fraudulent practices in violation of HRS §485-25(a)(1), (2), and (3). HRS §485-25 provides in relevant part:

> §485-25. Fraudulent and other prohibited practices.
>
> (a) It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly:
>
> (1) To employ any device, scheme, or artifice to defraud;
>
> (2) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
>
> (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;
>
> * * * *

The foregoing provisions mirror portions of the fraud provisions of Section 17(a) of the Securities Exchange Act of 1933. Interpretation of Hawaii's codification of securities fraud should be interpreted, where similar, in the same manner as the federal courts and the Securities and Exchange Commission have interpreted the federal counterpart.

The requirement for "scienter" in subsection (a)(1) of HRS §485-25 may be satisfied by a showing of a reckless disregard for the truth. It is not necessary to find that a misrepresentation or omission of material fact was made wilfully or maliciously in order to conclude that a violation of HRS §485-25(a)(1) has occurred. Such a violation will be sustained if the misrepresentation or omission was made recklessly. Proof of such recklessness may be based upon inferences from circumstantial evidence. *See Securities & Exchange Commission v. Burns, 816 F.2d 471 (9th Cir. 1987).*

A violation of HRS §485-25(a)(2) and (a)(3) occurs when there is any untrue statement of a material fact or any omission to state a material fact. A fact is considered material for purposes of Hawaii securities laws "if there is a substantial likelihood that its disclosure would have been considered significant by [a] reasonable investor." *See, e.g., Basic Inc. v. Levinson, 485 U.S. 224, 231, 108 S.Ct. 978, 983, 99 L.Ed.2d 194 (1988). See also, T.S.C. Industries, Inc. v. Northway, Inc., 426 U.S. 438 (1976).* As with Sections 17(a)(2) and (a)(3) of the Securities Exchange Act of 1933, scienter is not required for a violation of HRS §§485-25(a)(2) and (3). *See, e.g. Aaron v. Securities & Exchange Commission, 100 S.Ct. 1945 (1980); Securities & Exchange Commission v. Murphy, 626 F.2d 633 (9th Cir. 1980); and Securities & Exchange Commission v. Blazon Corp., 609 F.2d 960, 965 (9th Cir. 1979).*

In this case, Respondents made numerous false statements and omissions of material facts, including, but not limited to the following:

> a. Respondent Matsuyoshi told the Investors that their investment monies would purchase class A Common Stock of LKM;
>
> b. Respondent Matsuyoshi told the Investors that purchase of LKM stock would generate funds that would be used to purchase common stocks and bonds of public corporations, treasuries, options, and other investment vehicles;
>
> c. Respondent Matsuyoshi told Investors that their shares of LKM stock could be sold back to Respondent LKM and that Respondent LKM had an "obligation" of buying back their "outstanding class A common stock upon demand";
>
> d. Respondent Matsuyoshi described the redemption process to the Investors as follows: the price of their stock upon repurchase would be equal to the equity valuation (assets of the corporation less any liabilities of the corporation such as margin requirements) of the corporation divided by the outstanding number of class A shares and that the valuation of Respondent LKM's equity would be determined as of the close of the New York Stock

Exchange one day after it is known that the investor wished to sell back their stock which would allow LKM time to sell off any LKM investments to meet the cash demands of the Investors in the repurchase of their LKM stock;

e. Respondent Matsuyoshi told the Investors that common stock in Respondent LKM would be issued to them, however, no stock certificates were ever issued by Respondents;

f. Respondents failed to disclose that the LKM investment contracts were "securities" that were required to be registered with the Office of the Commissioner and were not registered or exempt from registration;

g. Respondents failed to disclose that Respondent LKM, as an investment company, was required to be registered with the Office of the Commissioner to transact securities as an investment adviser and was not registered and was not exempt from registration;

h. Respondents failed to disclose that Respondent Matsuyoshi was required to be registered with the Office of the Commissioner to transact securities and was not registered as a securities salesperson and/or investment adviser representative and was not exempt from registration;

i. Respondents failed to disclose information to the Investors as to where, in what, or how their investment monies would actually be invested;

j. Respondents failed to disclose to the Investors that Respondents would "pool" their investment monies and place the monies into a self-directed LKM business brokerage account at Charles Schwab totaling $1,030,176.11;

k. Respondents failed to disclose to the Investors that approximately $486,000.00 of Investor monies would be used to pay Respondent Matsuyoshi's personal expenses

The foregoing establishes that Respondents made numerous untrue statements of material facts and omitted to state material facts necessary to make statements made not misleading, and also engaged in acts and practices which operated as a fraud upon the Investors, in violation of HRS §§485-25(a)(2) and (3).

The Hearings Officer further concludes that Respondents employed a device or scheme to defraud investors in Hawaii in the form of their stock purchase agreements. Respondents induced the Investors to invest in their stock purchase agreements by leading them to believe that their investments would be handled in the same manner as when they had been clients of Respondent Matsuyoshi while she was at Paulson. The preponderance of the evidence established that Respondent Matsuyoshi never told the Investors that their investment in Respondent LKM would be handled differently. Moreover, Respondent Matsuyoshi did not appear to understand the intricacies of the investment scheme she had devised. When asked to explain the particulars of the valuation of the stock for purposes of repaying investors back their investment, Respondent Matsuyoshi could not explain or provide the calculation to support her understanding of the investment contract with the Innvestors.

In addition, as a former registered representative for Paulson, Respondent Matsuyoshi knew Respondent LKM was subject to the rules and regulations of state and/or federal securities regulators and that she was required to register with state and/or federal securities regulators in order to take custody of client funds or transact securities on clients' behalf. Notwithstanding that, Respondent Matsuyoshi obtained client funds and intentionally commingled client funds into one account at Charles Schwab in her name alone. Based on this record, the Hearings Officer concludes that Respondents had the requisite scienter and did violate HRS § 485-25(a)(1).

IV. RECOMMENDED ORDER.

For the reasons set forth above, the Hearings Officer recommends that the Commissioner find and conclude that the preponderance of the evidence established that

Respondents violated HRS §§485-8, 485-14, 485-25(a)(1), (2), and (3) of the Act and that the Preliminary Order to Cease and Desist issued by the Commissioner and the sanctions assessed therein against Respondents, be affirmed in its entirety.

Dated: Honolulu, Hawaii, OCT 20 2010

CRAIG H. UYEHARA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs