STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:	)	Case Nos.: SEU-2009-057, SEU-2010-001, SEU-2010-002, SEU 2010-003, and SEU-2012-006
NELSON WAIKIKI, JR.; OPUNUI WATER COMPANY, LLC; AND OPUNUI LAND AND WATER COMPANY, LLC,	)	PRELIMINARY ORDER TO CEASE AND DESIST AGAINST RESPONDENTS NELSON WAIKIKI, JR., OPUNUI WATER COMPANY, LLC, AND OPUNUI LAND AND WATER COMPANY, LLC AND NOTICE OF RIGHT TO HEARING
Respondents.	)	

PRELIMINARY ORDER TO CEASE AND DESIST AGAINST RESPONENTS NELSON WAIKIKI, JR., OPUNUI WATER COMPANY, LLC, AND OPUNUI LAND AND WATER COMPANY, LLC AND NOTICE OF RIGHT TO HEARING

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by the Uniform Securities Act found at Chapter 485A, of the Hawaii Revised Statutes ("HRS"), the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii ("Commissioner") has conducted a preliminary investigation into the activities of the above-named respondents to determine if they have engaged in or are about to engage in any act or practice constituting a violation of 485A, HRS, or any rule or order adopted thereunder.

From the information revealed pursuant to the investigation, the Commissioner has reasonable cause to believe that the above-named respondents have violated, or are about to violate, Chapter 485A, HRS, in that she finds:

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction under Chapter 485A, HRS, as this case involves the sale of securities, to wit, investment contracts, under HRS § 485A-102.

III. PRELIMINARY FINDINGS OF FACT

1. Respondent Nelson Waikiki, Jr. ("Waikiki"), is an individual and was, at all relevant times herein, a resident of the State of Hawaii.

2. Respondent Opunui Water Company, LLC ("Opunui Water"), was registered in the State of Hawaii as a Limited Liability Company on May 25, 2008. Its status was delinquent from 2009 to 2011. On October 13, 2011, Opunui Water's status became active again. From May 25, 2008, until December 19, 2011, Respondent Waikiki was its sole member and manager. On December 19, 2011, two additional individuals were added as members and managers. On March 22, 2012, Opunui Water was terminated by the filing of Articles of Termination.

3. Respondent Opunui Land and Water Company, LLC ("Opunui Land"), was registered in the State of Hawaii as a Limited Liability Company on May 15, 2008, and its status was delinquent from 2009 to 2011. Respondent Waikiki was a member, manager, and officer of Opunui Land from May 15, 2008, until it was administratively terminated on December 2, 2011.

4. "Respondents" hereinafter means Waikiki, Opunui Water, and Opunui Land.

5. From October 2008 until December 2011 and after, Respondents sought investors on Maui for an enterprise they called a "water selling system" also described as a "water utility company."

6. Respondents represented to investors, among other things, that:

a. the investment monies would be used for business-related expenses, including the purchase and installation of water meters and legal expenses;

b. the companies were endorsed by politicians, including Senator Daniel Akaka and then-Congressman now Governor Neil Abercrombie, and that President Barack Obama was Respondent Waikiki's business partner; and,

c. by order of the United States Congress, all water purchased in the State of Hawaii would be sold by or in association with Respondents.

7. Respondents solicited and received at least $73,000 from seven Hawaii Investors ("Investor One" through "Investor Seven," individually; or together, the "Investors"). Checks from the Investors were negotiated for cash by Respondent Waikiki at said Investors' banks. None of the Investors have received a return of their principal or any other return.

8. The Investors each furnished initial value to Respondents in the form of money paid by cash or check to purchase interest in the two limited liability companies, Opunui Water and Opunui Land, as follows:

a. Investor One invested $2,500 in Opunui Water in or around April of 2009 in exchange for ten percent of Opunui Water's future profits.

b. Investor Two invested $2,000 on October 10, 2008, $2,500 on October 21, 2008, and $2,000 on October 28, 2008, in Opunui Water in exchange for eighty percent of Opunui Water's future profits from two days per week of water sales "forever."

c. Investor Three invested $6,500 on November 16, 2008, $2,000 on November 21, 2008, and $500 on April 30, 2009, in both Opunui Water

and Opunui Land in exchange for twenty-five percent of the future profits generated by the two companies, and for twenty percent of the profits from two "meter projects" involved in the "water selling system."

d. Investor Four invested $15,000 in Opunui Water on December 1, 2008, in exchange for forty percent of the company's future profits.

e. Investor Five invested $5,000 on February 12, 2009, $1,500 on February 25, 2009, $1,000 on April 7, 2009, and $500 on April 20, 2009, in Opunui Water in exchange for fifteen percent of the company's future profits.

f. Investor Six invested $5,000 on February 27, 2009, and $5,000 on March 27, 2009, in Opunui Water in exchange for twenty percent of Opunui Water's profits.

g. Investor Seven invested $5,000 on May 5, 2009, $5,000 on May 13, 2009, $15,000 on June 5, 2009, $8,000 on June 9, 2009, and $1,000 on July 20, 2009, in Opunui Water and Opunui Land, due to Respondent Waikiki's promise that he would receive his principal investment back within a few months, after which he would receive a return of "hundreds of thousands of dollars each year."

9. Between October and December of 2011, Respondents sold an additional twenty percent of the future profits of Opunui Water to an investment group or "hui" formed by eight people on Maui (the "Hui").

10. The money invested by the Investors was subject to the risks of Respondents' "water selling system" enterprise.

11. The Investors were induced to invest with Respondents by Respondents' promises, guarantees, and/or representations that the Investors' investments were in exchange for the future profits and/or salaries from the "water selling system."

12. None of the Investors intended to be actively involved in, nor actually became involved in, the management of the enterprise in a meaningful way.

13. The interests purchased by the Investors in the two limited liability companies, Opunui Water and Opunui Land, were investment contracts, which constitute securities ("Securities") under HRS § 485A-102.

14. Respondents did not register the Securities with the Office of the Securities Commissioner ("Office of the Commissioner"), pursuant to HRS § 485A-301.

15. Respondent Waikiki acted as an agent ("securities agent") pursuant to HRS § 485A-102, by representing the issuers, Respondent Opunui Water and Respondent Opunui Land, in effecting and attempting to effect the purchases or sales of the issuers' Securities.

16. In his capacity as a securities agent for Respondent Opunui Water and Respondent Opunui Land, Respondent Waikiki was paid or given commissions or other remunerations, directly or indirectly, for soliciting the Investors. Specifically, Respondent Waikiki was paid or given some, if not all, of the Investors' investment monies for his personal expenses and use. However, he was not registered as a securities agent pursuant to HRS § 485A-402.

17. Respondents made the following untrue statements of material fact and material omissions, orally or via issued printed materials, in connection with the offer and/or sale of the

Securities, and as a result of, but not limited to, the following misrepresentations and omissions, the Investors were induced into investing with Respondents:

a. Respondent Waikiki promised the Investors that their investments would entitle them to certain percentages of future profits, which collectively exceeded one hundred percent of future profits. The Investors were not aware that Respondents utilized a practice of "oversubscribing" the interests in future profits.

b. Respondent Waikiki told at least one investor that all legal and permitting issues associated with the project were settled. This was not true.

c. In October 2008, Respondent Waikiki told at least one investor that his "water selling system" was already operating. It was not.

d. Respondent Waikiki told at least one investor that his water selling plan had been approved by the Hawaii Public Utilities Commission and Department of Land and Natural Resources. This was false.

e. Respondent Waikiki told more than one investor that U.S. Senator Daniel Akaka and then-Congressman now Governor Neil Abercrombie had endorsed and/or placed their "full support" behind Respondents' water selling system and that President Barack Obama was Respondent Waikiki's business partner. These statements were false.

f. On or about May 17, 2010, Respondent Waikiki sent an email to the Investors and others stating that he had "just completed U.S. House of Rep and Senate hearings to amend our company with approved permit on water for the entire state....Every land developer and private land owner will be required by the State to follow the

process of law approved by Congress to contact Opunui Water Company, LLC, on all water usage." This was false.

g. Respondent Waikiki told at least one investor that his investment was properly registered with the Department of Commerce and Consumer Affairs. It was not, and Respondent Waikiki failed to inform any of the Investors that their investments were required to be registered and were not.

h. Respondents failed to disclose that Respondent Waikiki was required to be registered with the Office of the Commissioner as a securities agent and was not so registered or exempt from registration under HRS Chapter 485A.

i. Despite Respondent Waikiki's promises to do so, Respondents failed to provide contracts to various investors recording the sales of their investments.

j. Respondents failed to disclose to the Investors that some, if not all, of their investment monies would be spent on Respondent Waikiki's personal expenses.

k. Respondent Waikiki told the Investors that some of the investment monies had been spent on legal services. However, when a member of the Hui contacted the paralegal who had performed legal services, she informed the Hui member that her invoice had not been paid.

l. Respondent Waikiki gave Investor Three a check for $11,000.00, falsely described as a "return" on Investor Three's investment, but advised Investor Three to wait before negotiating the check. Investor Three was never able to negotiate the check because Respondent Waikiki wrote it on insufficient funds. The account never held more than $48.00. Respondent Waikiki's promises to Investor

Three, that he would be able to negotiate the $11,000.00 check at some point, were false.

18. In furtherance of the offer, purchase, and/or sale of the Securities, Respondents employed devices, schemes or artifices to defraud and engaged in acts, practices, or courses of business to operate as a fraud or deceit upon the Investors, as evident in the acts described hereinabove.

IV. PRELIMINARY CONCLUSIONS OF LAW

19. The matters contained in paragraphs 1 through 18, inclusive, are reasserted and incorporated herein as if set forth verbatim.

20. The investment contracts described hereinabove constitute securities within the meaning of HRS § 485A-102 and other applicable authority, and were required to be registered with the Office of the Commissioner unless appropriately exempted.

21. The Securities sold to the Investors were not registered with the Office of the Commissioner, in violation of HRS § 485A-301, nor were they appropriately exempted from registration.

22. Respondent Waikiki's actions in connection with the offering for sale and/or selling of the Securities to the Investors constitute the transaction of business in the State of Hawaii by an unregistered agent in violation of HRS § 485A-402.

23. In connection with the offer, sale, or purchase of the Securities, Respondents employed a device, scheme, or artifice to defraud upon the Investors, in violation of HRS § 485A-501(1).

24. In connection with the offer, sale, or purchase of the Securities, Respondents misrepresented and/or omitted material facts to the Investors, in violation of HRS § 485A-501(2).

25. In connection with the offer, sale, or purchase of the Securities, Respondents engaged in acts, practices, or a course of business that operated as a fraud or deceit upon the Investors, in violation of HRS § 485A-501(3).

26. In connection with the offer, sale, or purchase of the Securities, Respondents issued, circulated, or published an untrue statement or a material fact, in violation of HRS § 485A-501(4).

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485A-604(a), because of the aforementioned findings and/or because it appears that Respondents may engage in further acts or practices in violation of Chapter 485A, HRS, 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. 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 Investors One through Seven, and any similarly situated investors, are hereby RESCINDED effective immediately. Respondents shall REFUND to the investors all monies or other compensation paid, plus interest at the rate of ten percent (10%) per annum from the date of the investment to the date of the refund payment until fully paid, less any monies already refunded to the investors. This payment shall be made within thirty (30) days of the date of the

Commissioner's Final Order (the "Final Order"). Proof of said payments to the investors shall be provided to the Securities Enforcement Branch within thirty (30) days of the date of the Final Order;

3. Respondents shall be liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, an ADMINISTRATIVE PENALTY in the sum of TWO HUNDRED THOUSAND AND NO/100 DOLLARS ($200,000.00) 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 Office of the Commissioner within thirty (30) days of the date of the Final Order;

4. Respondents are PERMANENTLY BARRED as agents, broker-dealers, investment advisers and/or investment adviser representatives from the date of the Final Order and from applying for registration in the State of Hawaii as agents, broker-dealers, investment advisers and/or investment adviser representatives from the date of the Final Order;

5. Each Respondent shall be subject to a civil penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS ($50,000.00) per violation for each and every violation of this preliminary order ("Order") or any order of the Commissioner, pursuant to HRS § 485A-604, and any future violation of Chapter 485A, HRS;

6. The imposition of this Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for past or future violations of Chapter 485, HRS, and/or its successor, Chapter 485A, HRS.

NOTICE OF RIGHT TO HEARING

YOU ARE HEREBY NOTIFIED that pursuant to HRS § 485A-604, you may request a hearing on this matter within thirty (30) days of the date of this Order. Your request must be in writing and addressed to: Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 541, Honolulu, Hawaii, 96809.

A copy of your written request for a hearing must be simultaneously served upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 40, Honolulu, Hawaii, 96810. If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by the Office of Administrative Hearings unless extended by the Commissioner for good cause.

If no written request for hearing is received by the Office of Administrative Hearings and none is ordered by the Commissioner, this Order shall remain in effect unless and until modified or vacated by the Commissioner or a Final Order becomes effective.

You are hereby further notified that pursuant to § 16-201-23 of the Hawaii Administrative Rules for Administrative Practice and Procedure, you may move the Commissioner to reconsider a Final Order within ten (10) days after receiving the Final Order. Your motion shall be filed with the Office of the Commissioner and shall state, specifically, what points of law or facts the Commissioner has overlooked or misunderstood, together with brief arguments on the points raised.

Additionally, pursuant to HRS § 485A-609, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii in the manner provided in Chapter 91, HRS.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

DATED: Honolulu, Hawaii, JUL -2 2012.

TUNG CHAN
Commissioner of Securities
DEPARTMENT OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII