



DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

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HEARINGS OFFICE

OFFICE OF ADMINISTRATIVE HEARINGS  
CONDOMINIUM MANAGEMENT DISPUTE RESOLUTION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

In the Matter of	)	CDR-1011-1
	)	
EVERETT SENTER,	)	HEARINGS OFFICER'S
	)	FINDINGS OF FACT,
Petitioner,	)	CONCLUSIONS OF LAW,
	)	AND DECISION
vs.	)	
	)	
HARBOR LIGHTS, ASSOCIATION	)	
OF APARTMENT OWNERS, BOARD	)	
OF DIRECTORS,	)	
	)	
Respondents.	)	
	)	

HEARINGS OFFICER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND DECISION

I. INTRODUCTION

On January 3, 2011, Everett Senter ("Petitioner"), attorney-in-fact for Sue Taylor, Trustee, Sue Taylor Trust ("Taylor Trust"), filed a request for hearing with the Office of Administrative Hearings, Department of Commerce and Consumer Affairs against Harbor Lights, Association of Apartment Owners, Board of Directors ("Respondents"). The matter was thereafter set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On June 21, 2011, Petitioner filed a Motion for a Determination that the Association's Fine Policy was Invalid; and on July 18, 2011, Respondents filed a Motion

to Dismiss for Lack of Jurisdiction. Both motions came on for hearing before the undersigned Hearings Officer on August 11, 2011, with Petitioner represented by his attorney, Yuriko J. Sugimura, Esq. and Respondents represented by its attorney, Lance Collins, Esq.

By letter dated December 19, 2011, the parties were notified that the Hearings Officer was denying Respondents' Motion to Dismiss and granting Petitioner's Motion for a Determination that the Association's Fine Policy was Invalid. The Hearings Officer also directed Petitioner to submit proposed findings of fact and conclusions of law. Accordingly, on January 13, 2012, Petitioner filed his proposed findings and conclusions and on January 25, 2012, Respondents filed their responsive proposed findings and conclusions. On January 27, 2012, Petitioner filed amended findings of fact, conclusions of law and order (1) denying Respondents' motion to dismiss for lack of jurisdiction filed July 18, 2011 and (2) granting Petitioner's motion for a determination that Association's Fine Policy was Invalid as to its Claim for Fines issued to Petitioner filed June 21, 2011.

The Hearings Officer, having heard the argument of counsel and having reviewed and considered the respective motions together with the declaration and exhibits attached thereto, along with the records and files herein, hereby renders the following findings of fact, conclusions, and decision.

## II. FINDINGS OF FACT

1. Petitioner is the son of, and attorney-in-fact, for Sue Taylor, who, as Trustee of the Taylor Trust, is the owner of ten residential units in the Harbor Lights condominium project located at 111 Kahului Beach Road in Kahului, Hawaii ("Project").

2. Respondent Association is the administrator and manager of the Project, which was created by a Declaration of Horizontal Property Regime dated September 7, 1973, recorded in the Bureau of Conveyances of the State of Hawaii at Liber 9476, Page 120 ("Declaration"). The Bylaws of Respondent Association, dated September 7, 1973, were recorded with the Bureau of Conveyances of the State of Hawaii at Liber 9476, Page 137 ("By-Laws").

3. Neither the Declaration nor the By-Laws contained any provision establishing a system or procedure for Respondent Association to impose, enforce or collect fines or penalties for House Rule violations.

4. On May 1, 1992, Respondent Association adopted new House Rules which purported to establish and implement a fine policy (“1992 House Rules”).

5. By instrument dated March 25, 1992, Respondent Association attempted to incorporate the 1992 House Rules into its Bylaws by way of a “Statement of Bylaws of the Association of Apartment Owners of Harbor Lights”, which was recorded with the State of Hawaii, Bureau of Conveyances on June 2, 1992 as Document No. 92-08682.

6. Over the last ten (10) years, Respondent Association has levied fines against and collected monies (in payment of such fines) from the Taylor Trust or its tenants based on a fine policy that was set out in its 1992 House Rules.

7. The dispute between the Taylor Trust and Respondents concerned Respondents’ imposition of these fines, including the validity of the fine policy and procedures under which said fines were imposed, enforced and collected.

8. The Taylor Trust and Respondents attempted to resolve this dispute in mediation conducted by the Mediation Services of Maui, but that proceeding was terminated without resolution on December 6, 2010.

9. Petitioner filed a request for hearing under Hawaii Revised Statutes (“HRS”) §514B-161 on December 29, 2010, within thirty days from the termination date of the mediation proceedings (December 6, 2010). Petitioner’s request for hearing was supplemented by the Supplemental Request for Hearing under HRS §514B-161, filed June 21, 2011, naming Respondent Association and its Board of Directors as adverse parties and identifying the statutory provisions in dispute (HRS §§514B-23, 514B-104, 514B-105, 514B-108, 514A-81, 514A-82(a)(7), and 514A-82.2).

10. On April 5, 2011, Respondent Association through its Board of Directors adopted two Resolutions (i) adopting a policy of applying current common

expense payments to past due fines under HRS § 514B-105(c) and (ii) establishing and implementing a fine policy under HRS §514B-104(a)(11) (“April 5, 2011 Resolutions”).

11. The April 5, 2011 Resolutions did not provide “that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process ...” as required by HRS §514B-104(a)(11) to make payment of disputed fines a prerequisite to initiating dispute resolution proceedings under HRS §514B-161.

### III. CONCLUSIONS OF LAW

Pursuant to the foregoing findings of fact, the Hearings Officer hereby renders the following conclusions of law:

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter herein, pursuant to HRS §514B-161(e).

2. HRS Ch. 514A governed the Project and Respondent Association until March 31, 2011, when Respondents recorded the Amendment to Bylaws of the Association with the Bureau of Conveyances of the State of Hawaii as Doc. No. 2011-052921, which amendment reflected that a majority vote of more than 65% of the holders of the common interest in the common elements of the Project opted to be governed by HRS Ch. 514B.

3. The recorded Statement of Bylaws of the Association of Apartment Owners of Harbor Lights dated March 25, 1992 did not constitute a valid restatement of Respondent Association’s Bylaws under HRS §514A-82.2 and did not establish a fine policy for the Project.

4. There is no statutory authority that supports Respondents’ position that adoption of the 1992 House Rules established a fine policy for the Project.

5. There is no provision in Respondent Association’s governing documents, i.e., its Declaration or Bylaws as they existed prior to March 31, 2011, that established a fine policy or authorized adoption of a fine policy by way of House Rules.

6. Prior to March 31, 2011, which was the effective date that Respondent Association opted-in to HRS Chapter 514B, HRS Chapter 514A-82(a)(7) required 65%

of the ownership interest in the condominium project to approve in writing the establishment and implementation of a fine system for the Project.

7. The mediation proceeding with Mediation Services of Maui encompassed the question of the validity of Respondent Association's fine procedure, which is the subject matter of the Request for Hearing filed December 29, 2010, as supplemented by the Supplemental Request for Hearing under HRS §514B-161, filed June 21, 2011.

8. Petitioner's Request for Hearing filed December 29, 2010, as supplemented by the Supplemental Request for Hearing under HRS §514B-161, filed June 21, 2011, was filed in accordance with all requirements of HRS §514B-161(e).

9. The Taylor Trust was not required to pay the disputed fines before initiating the dispute resolution proceeding under HRS § 514B-161.

10. The doctrines of ratification, estoppel, and laches are inapplicable under the circumstances of this case.

11. Neither Petitioner nor the Taylor Trust knowingly waived his/its right to contest the validity of the fine policy in question in this matter.

12. The adoption of the April 5, 2011 Resolutions did not affect the jurisdiction of the Office of Administrative Hearings over this matter.

13. The April 5, 2011 Resolutions (i) adopting a policy of applying current common expense payments to past due fines under HRS §514B-105(c) and (ii) establishing and implementing a fine policy under HRS §514B-104(a)(11) cannot be applied retroactively (prior to March 31,2011).

14. Prior to March 31, 2011, no valid and enforceable fine policy existed for Respondent Association.

15. The fines assessed against the Taylor Trust prior to March 31, 2011 are invalid and unenforceable.

#### IV. DECISION

Based on the foregoing considerations, the Hearings Officer orders as follows:

1. Respondent's Motion to Dismiss for Lack of Jurisdiction, filed July 18, 2011 is DENIED;
2. Petitioner's Motion for a Determination that the Association's Fine Policy was Invalid as to its Claims for Fines Issued to Petitioner, filed June 21, 2011, is GRANTED;
3. Any and all fines assessed against the Taylor Trust and its tenants prior to March 31, 2011 are invalid and unenforceable;
4. Respondents shall reverse any and all fines levied upon the Taylor Trust's accounts prior to March 31, 2011;
5. Respondents shall reverse the application of any and all monthly maintenance fee payments made by the Taylor Trust to any fines, late fees, and/or penalties charged to the Taylor Trust's accounts prior to March 31, 2011, and shall re-apply those payments towards monthly maintenance fees only;
6. Respondents shall reverse all late fees and interest charged to the Taylor Trust accounts due to the application of monthly maintenance fee payments to any fines and/or penalties levied prior to March 31, 2011;
7. Respondent shall reimburse the Taylor Trust for any and all amounts it collected from the Taylor Trust or its tenants prior to March 31, 2011 in respect of fines and penalties that were issued, levied or charged to the Taylor Trust account prior to March 31, 2011 and it shall reimburse the Taylor Trust for any and all sums it collected prior to March 31, 2011 as a result of applying current monthly maintenance fees to fines and penalties issued, levied or charged to the Taylor Trust accounts prior to March 31, 2011; and
8. Each party shall bear his/its own attorney's fees and costs incurred in this matter.

Dated at Honolulu, Hawaii: \_\_\_\_\_



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