



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

In the Matter of) CDR 2005-2
)
MICHAEL RIORDAN,)
) HEARINGS OFFICER'S FINDINGS OF
) FACT, CONCLUSIONS OF LAW AND
Petitioner,) ORDER
)
vs.)
)
EDEAN HAYASHIDA and MARC)
UDOFF,)
Respondents.)
_____)

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

I. INTRODUCTION

On October 5, 2005, Michael Riordan ("Petitioner") filed a request for administrative hearing to resolve a condominium management dispute pursuant to Hawaii Revised Statutes ("HRS") § 514A-121.5. The matter was set for hearing and the Notice of Hearing and Pre-Hearing Conference was duly served on the parties.

On November 21, 2005, the hearing was convened by the undersigned Hearings Officer. Petitioner appeared *pro se*, and Edean Hayashida ("Respondent Hayashida") and Marc Udoff ("Respondent Udoff") were represented by John A. Morris, Esq.

Having reviewed and considered the evidence and arguments presented, together with the entire record of this proceeding, the Hearings Officer hereby renders the following findings of fact, conclusions of law and order.

II. FINDINGS OF FACT

1. Petitioner and his wife are residents of Hale O Pumehana. Petitioner is a member of the Board of Directors of the Association of Apartment Owners of Hale O Pumehana (“Board”). The Board consists of five (5) members.

2. Respondent Hayashida is the President of the Board. The Bylaws of the Association of Apartment Owners (“AOAO”) of Hale O Pumehana state that the President:

shall be the chief executive officer of the Association and shall preside at the meetings of the Association and of the Board of Directors. Subject to the control of the Board, he shall exercise general supervision and direction over the management and conduct of the business and affairs of the Association. He shall also have such other powers and duties as may be provided by these By-Laws or assigned to him from time to time by the Board.

3. Respondent Udoff is a Management Executive with Hawaiiiana Management Company, Ltd. (“Hawaiiiana Management”). Respondent Udoff is the property manager for the AOAO of Hale O Pumehana. The Property Management and Agency Agreement between Hawaiiiana Management and the AOAO of Hale O Pumehana states that Hawaiiiana Management, on behalf of the AOAO of Hale O Pumehana and at the direction of the Board, shall supervise all employees, including the resident manager that may be hired by the Board.

4. For many years, Petitioner and his wife had access to and used the enterphone code to their building because Petitioner’s wife is disabled and it is difficult for her to use the key.

5. At its April 2005 meeting, the Board decided to change the enterphone code because it was reported that unauthorized individuals were using the code, and because the resident manager had changed. Respondent Hayashida initially instructed the resident manager not to give the code to anyone. However, after Petitioner requested the code for himself and his wife, Respondent Hayashida authorized the resident manager to give the code to them.

6. At the Board’s June 22, 2005 meeting, a Board member reported that she saw two boys use the enterphone to enter the building. The Board agreed to ask the resident manager to find out who they were. In an email to the Board, Respondent Udoff informed the Board that by using the building’s camera system, the resident manager discovered that the boys were residents of the building, and upon questioning them, found out that they

received the code through Petitioner's "niece". Respondent Udoff informed the Board that the enterphone code had been changed again and only the resident manager and the newspaper people have the enterphone code. In this email, Respondent Udoff asked the Board to tell him how they would like the resident manager to proceed, and that whatever the majority decided would set the policy for who gets the enterphone code, if anyone. By email, Respondent Hayashida also asked for the Board's thoughts on how to proceed. One Board member was not included in these emails because he does not have access to email.

7. By an email dated June 24, 2005 to Respondent Hayashida and Respondent Udoff and the other Board members, Petitioner informed them that he will ask his "niece" about the incident, and if she deliberately gave out the enterphone code, that she will be reprimanded and deprived of the code in the future. Petitioner also stated that he expected to receive the new code from the resident manager.

8. The Board members who responded through email thought that the enterphone code should not be given out and if it is, that person or persons should sign a written note that it would not be given to anyone else.

9. In an email in response, Petitioner argued that the Board was depriving himself and his wife of the use of a common element and that the Board was not acting in accordance with Robert's Rules of Order.

10. In an email dated July 1, 2005, Petitioner informed Respondents that Petitioner's wife was willing to sign an agreement not to share the enterphone code and that she had put a note to that effect into the lobby suggestion box three days ago, with no response. Petitioner stated that he expected his wife to have the enter phone code by the next day.

11. Respondent Hayashida responded to Petitioner stating that she would ask the resident manager to take care of this the next morning, as the Board had agreed that the enterphone code could be given to Petitioner's wife upon her signing the agreement. Respondent Hayashida testified that Petitioner's wife's request was delayed because it was put in the suggestion box, but within two hours of receiving the request, Petitioner's wife received the enterphone code.

12. At the July 20, 2005 Board meeting, a motion to ratify "any and all directives that were made in connection with protecting the security of Hale O Pumehana as well as

requiring a signature on the Confidentiality Agreement from all vendors and/or residents who have a compelling need to have the Manager's override security code for the Enterphone system" was carried, with two Board members voting in favor and Petitioner voting against the motion.

13. At the August 17, 2005 Board meeting, motions to: (1) change the enterphone code whenever it has been breached by an unauthorized person, (2) release the confidential enterphone code to those residents who show a compelling need to have it as long as they sign the Confidentiality Agreement, (3) adopt the Confidentiality Agreement as the official document for those residents approved to have the confidential enterphone code, and (4) revoke the code from anyone who breaches the Confidentiality Agreement by giving the enterphone code to any unauthorized person, were carried with Respondent Hayashida, the Vice President and Treasurer voting in favor and Petitioner voting against the motions. While Petitioner does not agree with the actions taken, Petitioner agrees that the actions taken at this meeting were valid.

14. Board Vice President Pam Minder testified that she believed that Respondent Hayashida acted within the parameters of Board discussions and decisions.

15. Respondent Udoff manages ten other projects, and testified that it is not unusual for Board members to discuss matters by email or for a board president to make decisions like giving out the enterphone code.

16. Petitioner agreed at the hearing that it is common and acceptable for Board members to discuss issues by email and that the Board may later ratify actions taken.

III. CONCLUSIONS OF LAW

Petitioner alleged that Respondents violated the provisions of Hawaii Revised Statutes ("HRS") §§ 514A-13, 514A-82(a)(9), 514A-82(a)(10), 514A-82(a)(13), 514A-82(a)(16), 514A-82(a)(18), 514A-83.4(a), 514A-83.5(b), 514A-121.5(a), 515-3(10), and 515-3(11). However, HRS § 514A-121.5 only provides jurisdiction to hear violations of 514A-82(a)(9), 514A-82(a)(10), 514A-82(a)(13), 514A-82(a)(16), 514A-82(a)(18), 514A-83.4(a), 514A-83.5(b). At the hearing, Petitioner agreed that allegations that Respondents violated HRS §§ 514A-82(a)(9), 514A-82(a)(10), 514A-82(a)(13), 514A-82(a)(16) and 514A-

82(a)(18) were no longer an issue. Accordingly, the only issues for determination are whether Respondents violated HRS §§ 514A-83.4(a) and 514A-83.5(b) which provide:

§ 514A-83.4 Meeting minutes. (a) Minutes of meetings of the board of directors and association of apartment owners shall include the recorded vote of each board member on all motions except motions voted on in executive session.

(b) Minutes of meetings of the board of directors and association of apartment owners shall be approved at the next successive meeting; provided that for board of directors meetings, no later than the second succeeding meeting.

Petitioner argued that Respondents violated HRS § 514A-83.4 by failing to have minutes of Board meetings that Petitioner contends were conducted when Board members and Respondent Udoff discussed matters by email. Respondents argued that they and other Board members did not conduct Board meetings by email, but merely discussed issues that were again discussed and voted upon at a Board meeting. Based on the evidence presented in this case, the Hearings Officer finds that Petitioner did not prove by a preponderance of the evidence that the email communications were board meetings and accordingly, concludes that Respondents did not violate HRS §§ 514A-83.4(a) and 514A-83.4(b).

Petitioner also argued that actions taken by Respondents with respect to the enterphone code prior to the August 17, 2005 meeting were invalid. The evidence presented established that Respondents changed the enterphone code, required people given the code to sign a confidentiality agreement and decided that only persons with a compelling reason would be given the code prior to the Board's July 20, 2005 meeting, and that a motion to ratify any and all directives made in connection with protecting the security of the building was passed at the Board's July 20, 2005 meeting. Petitioner did not present any authority in favor of his position, and in fact, agreed that the Board could ratify actions taken. Accordingly, the Hearings Officer concludes that the actions taken by the Board prior to August 17, 2005 were valid.

IV. ORDER

Based on the foregoing, the Hearings Officer finds that Petitioner failed to prove by a preponderance of the evidence that Respondents violated HRS §§ 514A-83.4 (a) and 514A-

83.4(b). Accordingly, it is hereby ordered that Petitioner's request for hearing is dismissed. The Hearings Officer also orders the parties to bear their own costs, including attorney's fees.

DATED: Honolulu, Hawaii, _____.

SHERYL LEE A. NAGATA
Administrative Hearings Officer
Department of Commerce
and Consumer Affairs