



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813

Resolution of Charge **2019-1**

(COMPL-C-17-00001-01)

Department of Land and Natural Resources, Division of Boating and Ocean Recreation, Kauai Office, Building Maintenance Worker's Alleged Violations of Fair Treatment Law

April 9, 2019

The Hawaii State Ethics Commission ("Commission") has resolved a Charge and Further Statement of Alleged Violation issued against Bruce Kelekoma, Building Maintenance Worker I, Department of Land and Natural Resources ("DLNR"), Division of Boating and Ocean Recreation, Kauai Office ("DOBOR-Kauai"), for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84.

On May 17, 2018, the Commission issued Charge COMPL-C-17-00001-01 ("Charge") against Bruce Kelekoma ("Respondent Kelekoma" or "Respondent"), alleging that his conduct violated the State Ethics Code. Respondent filed an Answer to the Charge on June 21, 2018. The Commission issued a Further Statement of Alleged Violation ("Further Statement") on January 24, 2019. Respondent filed an Answer to the Further Statement on March 6, 2019.

I. Facts

Respondent Kelekoma admitted and declared, under penalty of perjury, that the following facts are true and correct:

- a) Respondent Kelekoma, at all times relevant herein, was employed by the Department of Land and Natural Resources ("DLNR"), a state agency, in the Kauai office of the Division of Boating and Ocean Recreation ("DOBOR-Kauai"). He has worked for DOBOR-Kauai since approximately 2013 as a Building Maintenance Worker ("BMW") I.
- b) Respondent Kelekoma, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Kelekoma was required to comply with the State Ethics Code.

Use of State resources for personal and/or private business purposes

- c) In or around July 2014, the then-District Manager of the DOBOR-Kauai office, Joseph Borden (“former District Manager Borden” or “Borden”), used his State pCard, and State funds, to purchase \$2,753.89 in automobile parts and repair services from Kauai Auto Repair LLC for Respondent Kelekoma’s personal benefit. Among other things, former District Manager Borden purchased four new tires and alignment for Respondent Kelekoma’s personal truck, claiming in procurement documents that the purchase was for a DOBOR-Kauai 2012 Ford F-350 truck with license plate E-621. Borden had previously claimed to purchase new tires for that same DOBOR-Kauai truck in January 2012 (when the vehicle was first purchased) and again in January 2014, and Respondent Kelekoma subsequently claimed to purchase new tires for the same DOBOR-Kauai truck (E-621) in August 2016. In a procurement document, Borden claimed that the July 2014 purchase of new tires – six months after the January 2014 purchase of new tires, was necessary because “E621 tires are worn and treads are showing.” In fact, the July 2014 purchase was for Respondent Kelekoma’s personal benefit. Respondent Kelekoma accepted the automobile parts and services for Respondent’s personal truck knowing that State funds were used to pay for these parts and services.
- d) In or around December 2014, Borden requested approval to dispose of a DOBOR-Kauai 2003 GMC truck that had been involved in an accident; the front of the vehicle was damaged, but the cabin and rear of the vehicle were undamaged and would have been valuable for parts. The disposal memorandum indicated that the vehicle would be disposed of at the Puhi Metal Facility. In or around 2015 or 2016, after Borden received approval to dispose of the vehicle, Respondent Kelekoma took possession of the tires from that GMC truck for his personal use, said to be apparently dropped off by another DOBOR-Kauai employee.
- e) Respondent Kelekoma’s family leases pasture land in Anahola from the Department of Hawaiian Home Lands. The Kelekomas’ pasture is used to raise cattle. On or about October 14, 2016, Respondent Kelekoma and several other DOBOR-Kauai employees were tasked with disposing of a 55-gallon barrel of diesel fuel that had washed up on a Kauai beach. The fuel should have been disposed of as hazardous waste at the Nawiliwili Small Boat Harbor. Instead, Respondent Kelekoma transported the diesel fuel to the Kelekomas’ pasture land in Anahola on state work time, using a state truck, so that it could be used for personal purposes. Respondent Kelekoma poured the diesel fuel on fence posts as a preservative at the Anahola pasture land, rather than disposing of the fuel as hazardous waste.

- f) On or about March 21, 2017, Respondent Kelekoma directed DOBOR-Kauai employees under his supervision to cut kiawe wood, bring it back to the DOBOR-Kauai facility, and/or load wood into his personal truck for his and others' personal use. The work order Respondent Kelekoma prepared for the day directed the DOBOR-Kauai employees to "bring back good timber," and Respondent Kelekoma took kiawe wood for his personal use.
- g) On or around April 6, 2017, Respondent Kelekoma used his state pCard, and state funds, to purchase light bulbs for his personal Nissan truck. Specifically, he purchased two stoplight bulbs for \$1.29 each and a parking light bulb for \$0.99 (both plus state General Excise Tax) from Pacific Service and Development (also known as Napa Auto Parts) in Lihue. At the time, DOBOR-Kauai did not own a 1996 Nissan, but Respondent Kelekoma owned a 1996 Nissan pickup truck.
- h) In or around May of 2017, Respondent Kelekoma used state time and equipment to replace the carburetor in Borden's personal string trimmer.
- i) On multiple occasions between 2013 and 2018, Respondent Kelekoma took DOBOR-Kauai equipment away from state premises for his personal use.

Conflicts of Interests

- j) As part of his state duties, Respondent Kelekoma periodically made purchases from Kauai Marine and Mower, a marine equipment store. For example, in or around August 2016, Respondent Kelekoma purchased \$458.26 of supplies from Kauai Marine and Mower. Similarly, as part of his state duties, Respondent Kelekoma periodically provided recommendations to former District Manager Borden and/or others as to whether to purchase items for DOBOR-Kauai from Kauai Marine and Mower. For example, in or around December 2015, Respondent Kelekoma participated in discussions with his supervisors regarding the purchase of a trailer from Kauai Marine and Mower. As such, Respondent took official state action affecting and/or involving Kauai Marine and Mower by making decisions and recommendations about purchasing equipment and other items from Kauai Marine and Mower.
- k) On two occasions thereafter – on November 17, 2016, and again on November 29, 2016 – Respondent Kelekoma performed paid services for Kauai Marine and Mower. On each occasion, Kauai Marine and Mower paid Respondent Kelekoma two hundred dollars for his services.

Certifications of disposal of state equipment; testimony to Ethics Commission investigator

- l) On March 3, 2017, Respondent Kelekoma signed a Certificate of Disposal for a 25-gallon FEMCO sprayer belonging to DOBOR-Kauai, in which he certified the following: "I certify that I have participated in or witnessed the disposal, trade-in or sale of all items as approved on the above-referenced application and acknowledge that any mark or decal indicating State of Hawaii ownership has been removed or eradicated." In fact, Respondent Kelekoma did not participate in or witness the disposal, trade-in, or sale of the sprayer.
- m) On May 23, 2017, Respondent Kelekoma signed a Certificate of Disposal for a Tiger Cat 48" zero turning radius riding lawnmower belonging to DOBOR-Kauai, in which he certified the following: "I certify that I have participated in or witnessed the disposal, trade-in or sale of all items as approved on the above-referenced application and acknowledge that any mark or decal indicating State of Hawaii ownership has been removed or eradicated." In fact, Respondent Kelekoma did not participate in or witness the disposal, trade-in, or sale of the lawnmower.
- n) On February 23, 2018, Respondent Kelekoma appeared in Honolulu, pursuant to a subpoena, for an investigatory interview with the Commission's staff, where he was questioned regarding this equipment.
- o) Respondent was interviewed as part of an official investigation and was questioned about actions taken and knowledge he possessed as a result of his state position. Prior to the interview, Respondent was informed of his right to appear with an attorney or union representative of his choosing, and Respondent attended the interview with a union representative.
- p) At the outset of the February 23, 2018 interview, Respondent Kelekoma was placed under oath by a commissioned notary public.
- q) The Commission's Investigator questioned Respondent Kelekoma regarding the May 23, 2017 disposal of the Tiger Cat riding lawnmower, purchased in 2014 for approximately \$8,060.37 by DOBOR-Kauai.
- r) Respondent Kelekoma admitted, under oath, that he signed the May 23, 2017 Certificate of Disposal for the Tiger Cat lawnmower. He then testified as follows:

INVESTIGATOR: Okay. So you were certifying that you disposed of the Tiger Cat?

KELEKOMA: Yes.

INVESTIGATOR: And where did you, what did you do with it?

KELEKOMA: I took it to the metal recycling.

INVESTIGATOR: Okay. And did you receive any sort of receipt for it?

KELEKOMA: No.

INVESTIGATOR: Was there any record that you took it there?

KELEKOMA: No.

INVESTIGATOR: How did you take it there?

KELEKOMA: With the trailer.

INVESTIGATOR: Did anybody go with you?

KELEKOMA: No.

- s) The Commission's Investigator interviewed Respondent Kelekoma again on March 16, 2018. Respondent Kelekoma was again placed under oath. Now represented by an attorney, Respondent Kelekoma testified as follows:

INVESTIGATOR: Okay. I'm just going to ask you, what happened to the Tiger Cat?

KELEKOMA: I don't know.

INVESTIGATOR: The last time we spoke, you testified that you disposed of it directly. Are you saying now that you do not know what happened to it?

KELEKOMA: Yes, I can recall that, on that, that I was told to dispose but I didn't.

...

INVESTIGATOR: Okay. So here's the thing. The last time you were pretty specific about where you took it and that you just dropped it somewhere, and I just want to be clear. Now you're saying that you did not in fact take it like you had told us last time?

KELEKOMA: Yes.

- t) In the February 23, 2018 interview, Respondent Kelekoma also testified regarding the disposal of the sprayer in March 2017. He admitted, under oath, that he signed the Certificate of Disposal on March 3, 2017, and then testified as follows:

INVESTIGATOR: And when you certified that you participated or witnessed the disposal of the tank, how exactly was it disposed of?

KELEKOMA: I took it to the transfer station.

...

INVESTIGATOR: So the transfer station, where was that?

KELEKOMA: At Lihue, past the airport.

INVESTIGATOR: And how soon after the accident occurred that broke the tank did you take it to the transfer station?

KELEKOMA: After we got, I signed off on this disposal.

INVESTIGATOR: And how long passed between the time it got damaged and the time you signed off on the disposal?

KELEKOMA: About, I don't remember.

INVESTIGATOR: Well was it days?

KELEKOMA: About a week or so.

- u) At the second interview with Commission staff on March 16, 2018, after being placed under oath, Respondent Kelekoma testified as follows:

INVESTIGATOR: [You told us that] when the tank broke you disposed of the tank, the hoses, the wires, and the new pump. You remember telling us that?

KELEKOMA: Can I recall on that one?

INVESTIGATOR: Sure.

KELEKOMA: Yeah, I mean, I wrote the disposal on that, but I didn't get rid of the tank. I was just told to dispose of it, but I didn't.

INVESTIGATOR: And where did it end up?

KELEKOMA: I don't know.

II. The State Ethics Code, HRS Chapter 84

A. Constitutional Mandate and Statutory Purpose

The State Ethics Code arises from the declaration contained in the State Constitution that “[t]he people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.”¹ To this end, the Hawaii Constitution further directs that the legislature enact a code of ethics that applies to all appointed and elected state officers and employees.

In accordance with this constitutional mandate, the legislature enacted the State Ethics Code and charged the Commission with administering and enforcing the law “so that public confidence in public servants will be preserved.”² Additionally, the legislature explicitly directed that the State Ethics Code be liberally construed to promote high standards of ethical conduct in state government. HRS § 84-1. It is in this context that the Commission examines every employee’s actions.

¹ Hawaii State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

B. Application of the State Ethics Code to Respondent Kelekoma

As an employee of DOBOR-Kauai, Respondent Kelekoma is a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Kelekoma is required to comply with the State Ethics Code.

HRS § 84-13 (the Fair Treatment Law) prohibits a state employee from using her or his state position to obtain unwarranted privileges, advantages, or benefits for the employee or others. HRS § 84-14 (the Conflicts of Interests Law) prohibits a state employee from acquiring a financial interest, such as employment, in any business “which the employee has reason to believe may be directly involved in official action to be taken by the employee.”

The Commission investigated Respondent Kelekoma’s actions and believes that Respondent Kelekoma likely violated the Fair Treatment law by using state time, equipment, supplies, and personnel for his personal benefit and/or the benefit of other individuals or private businesses. Diverting state resources for one’s personal use raises serious concerns under the State Ethics Code and undermines the trust placed in government officials by the people of Hawaii. In this case, Respondent admitted to knowingly taking possession for personal use of items and services that were purchased using State funds. This behavior is unacceptable.

The Commission also believes that Respondent Kelekoma likely violated the Conflicts of Interests law by acquiring outside employment with Kauai Marine and Mower, when he had repeatedly taken official action involving Kauai Marine and Mower.

Finally, the Commission is particularly troubled by Respondent’s testimony, as quoted above, which suggests – at the very least – a lack of cooperation by the Respondent in the Commission’s investigation. See HRS § 84-36 (“The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the state cooperation and assistance in the performance of its duties.”).

Pursuant to the Commission’s agreement with the Respondent, this matter is referred to DLNR for further action as appropriate.

³ HRS § 84-3.

III. Resolution of Charge

The Commission believes that, based on the facts admitted above,⁴ Respondent Kelekoma likely violated the Fair Treatment Law (HRS § 84-13) and the Conflicts of Interests Law (HRS § 84-14(b)).

Respondent Kelekoma has not previously been the subject of a Commission charge or investigation.

Given the likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve the Charge and Further Statement of Alleged Violation by (1) issuing this Resolution of Charge, (2) requiring Respondent Kelekoma to pay an administrative penalty of \$4,500 to the State of Hawaii, and (3) referring this matter to DLNR for further action as appropriate.

⁴ This Resolution does not make formal findings, but relies on the facts admitted by Respondent Kelekoma.