



# HAWAII STATE ETHICS COMMISSION

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

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## **Resolution of Investigation** **2017-1**

**(COMPL-16-00522)**

### **State Harbor Agent's Acceptance of Free Parasailing Rides**

**February 16, 2017**

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The Hawaii State Ethics Commission ("Commission") has resolved an investigation of Respondent William Nahale, Harbor Agent III, Department of Land and Natural Resources, for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84.

The Commission initiated its investigation after receiving information that Respondent Nahale had accepted free parasailing rides from a company, UFO Parasail, that was subject to his official authority as a Harbor Agent.

Respondent Nahale fully cooperated with the Commission in its investigation, and has not previously been the subject of a Commission charge or investigation. The Commission and Respondent Nahale agreed to resolve the investigation with Respondent's payment of a \$1,000 administrative penalty to the State of Hawaii, payment of restitution of \$238.45 to UFO Parasail, and the publication of this Resolution of Investigation. The Commission believes that the terms of the resolution are fair and in the public interest.

#### I. Facts

Respondent Nahale admitted the following facts.

As a Harbor Agent III, Respondent Nahale oversees the Kailua-Kona Small Boat Harbor ("Kailua-Kona Harbor") and related ocean waters. His duties include issuing use permits, collecting fees and costs from businesses operating in the harbor, coordinating enforcement of ocean and permitting laws, assisting in the promulgation of rules governing harbor activities, and making recommendations as to whether businesses should be permitted to operate in Kailua-Kona Harbor.

UFO Parasail is a parasailing company that operates in Kailua-Kona Harbor, and Respondent Nahale oversees UFO Parasail's operations in his state employment.

On October 28, 2016, Respondent Nahale accepted free parasailing rides from UFO Parasail for himself, another adult, and three minors. The total value of the parasailing rides was \$238.45.

Prior to October 28, 2016, Respondent Nahale used his state email address to arrange for the free rides. He informed UFO Parasail's staff that he wanted to go parasailing with "close friends," and in response, UFO Parasail offered the free parasailing rides. Nahale then sent emails from his state email account stating that "I will find some way of giving back to you guys for sure" and that "I'll be sure to kick down some specialties for you and your staff as compensation . . . ."

In November 2016, after the Commission received an inquiry into Respondent Nahale's actions, he offered to pay UFO Parasail for the parasailing rides. To date, Respondent Nahale has not yet paid for the rides.

## 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."<sup>1</sup> 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."<sup>2</sup> It is in this context that the Commission examines every employee's actions.

### B. Application of the State Ethics Code to Respondent Nahale

#### 1. Improper Gifts

HRS § 84-11 (the "Gifts Law") prohibits a state employee from soliciting, accepting, or receiving any gift "under circumstances in which it can reasonably be inferred that the gift is intended to influence [the employee] in the performance of [the employee's] official duties or is intended as a reward for any official action on [the employee's] part." In determining whether or not a gift may be accepted, the Commission generally considers several factors including: (1) the value of the gift; (2) the relationship between the person or entity offering the gift and the employee being offered the gift, including whether the offeror is subject to official action by the recipient; and (3) whether the gift is "personal" or provides a "state

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<sup>1</sup> Hawaii State Constitution, Art. XIV.

<sup>2</sup> HRS Chapter 84, Preamble.

benefit," *i.e.*, whether the gift will benefit the recipient in the performance of his or her official duties.

By accepting free parasailing rides from UFO Parasail, Respondent Nahale likely violated HRS § 84-11. The "gift" of parasailing rides in this case was over \$200 in value; the company providing the rides was subject to the Respondent's official action as a Harbor Agent for the State; and the rides were purely for personal recreation. Respondent's regulatory authority over the company providing the rides is particularly significant in this case. For employees whose official duties include law enforcement or regulation, the acceptance of any gifts from persons subject to their authority is prohibited.

## 2. Fair Treatment

HRS § 84-13 (the "Fair Treatment" law) prohibits state employees from using their state positions to gain unwarranted advantages or benefits for themselves or others.

Respondent Nahale likely violated the Fair Treatment law by using his state position and state email to obtain free parasailing rides that he would not have received but for his position as a Harbor Agent. Respondent Nahale's statements that he would "give back" to UFO Parasail for providing the free rides suggest that he would use his state position to benefit UFO Parasail. This is prohibited by the Fair Treatment law.

## III. Resolution of Investigation

If this matter proceeded to a formal charge and contested case hearing, the Commission would likely find that Respondent Nahale violated HRS § 84-11 and HRS § 84-13. The Commission makes no such formal finding, however, given Respondent Nahale's willingness to resolve this case. Instead, this Resolution is being issued pursuant to the Commission's agreement with Respondent Nahale to resolve this issue without any further administrative proceedings.

Respondent Nahale fully cooperated with the Commission during its investigation of this matter. Respondent previously contacted UFO Parasail to inquire about paying for the parasailing trip, promptly responded to the Commission's inquiry, and recognized the State Ethics Code's applicability to his actions.

In light of the foregoing, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by: (1) issuing this Resolution of Investigation; (2) having Respondent Nahale pay \$1,000 as an administrative penalty to the State of Hawaii; and (3) having Respondent Nahale pay \$238.45 in restitution to UFO Parasail.