



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

In the Matter of

TAD IIMURA,

Petitioner,

vs.

BOARD OF DIRECTORS, ONE
KALAKAUA SENIOR LIVING
ASSOCIATION and METROPOLITAN
MANAGEMENT, INC.,

Respondents.

CDR-2005-3

ORDER OF DISMISSAL

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On October 6, 2005, Tad Iimura (“Petitioner”) filed a request for hearing with the Condominium Dispute Resolution Pilot Program (“CDR Pilot Program”) in the above-captioned matter pursuant to Hawai`i Revised Statutes (“HRS”) §514A-121.5. The case was scheduled for hearing along with a pre-hearing conference and the parties were duly served with the Notice of Hearing and Pre-hearing Conference.

By letter dated November 2, 2005, Michael G.M. Ostendorp, attorney for Petitioner, entered his appearance in this matter.

On November 10, 2005, Metropolitan Management Inc. (“Respondent Metropolitan”), by and through its attorney Christopher Shea Goodwin, filed its Response to Request for Hearing, and Mr. Goodwin also filed his Notice of Appearance of Counsel for Respondent Metropolitan.

By letter dated November 14, 2005, Mr. Ostendorp informed the undersigned Hearings Officer that Mr. Ostendorp and George Van Buren, the attorney for the Board of Directors, One Kalakaua Senior Living Association (“Respondent Board”) were negotiating

a settlement and therefore the parties requested that the deadline to submit their hearing-related documents be extended.

Subsequently, the hearing was rescheduled at the request of the parties.

On December 13, 2005, the parties filed a Stipulation to Settle Petition for Hearing Relief Filed on October 6, 2005, which specified that Petitioner would be provided access to documents identified in the Stipulation. The Stipulation also stated in relevant part:

8. That the parties agree that the Hearings Officer shall retain jurisdiction over this action until the parties jointly inform him in writing that the review of the records is completed, at which time the Petition shall be dismissed pursuant to §16-201-34.1(a)(2)[.]

On December 19, 2005, the parties filed a Stipulation to Continue Hearing Date until Further Notice.

On June 30, 2006, the provisions of HRS §514A-121.5 were repealed pursuant to Act 164, 2004 Session Laws of Hawai`i.

On December 12, 2006, the undersigned Hearings Officer issued his Order Staying Further Proceedings based upon the repeal of HRS §514A-121.5.

On July 2, 2007, HRS §514A-121.5 was reenacted by the Legislature.

On August 28, 2007, the undersigned Hearings Officer issued a Notice of Status Conference to the parties.

By letter dated September 5, 2007, Robert G. Campbell, Esq., on behalf of Mr. Van Buren, informed the undersigned Hearings Officer that the above-captioned matter had been settled. Copies of Mr. Campbell's September 5, 2007 letter were also sent to Mr. Ostendorp and Mr. Goodwin.

By letter dated September 6, 2007, Petitioner provided a chronology of the Petitioner's efforts to review the certain documents identified in the Stipulation to Settle Petition for Hearing Relief and included:

- a. A letter dated February 13, 2006 from Mr. Ostendorp to Mr. Van Buren, which identified the following items that had not been provided for Petitioner's inspection:

1. The retainer/engagement letters for attorneys Jim Wright, Corey Park, Phil Nerney, George Van Buren and Chris Porter;
 2. The financial statements for 10/01/01 through 9/02/02;
 3. The minutes for all the executive sessions for 2003 through 2005;
 4. The minutes by the board denying Petitioner's request for mediation; and
 5. The letter from the IRS that resident care services are not for profit.
- b. A letter dated February 23, 2006 from Mr. Van Buren to Mr. Ostendorp, which stated in relevant part, "to the extent the documents to which you refer in your February 13, 2006 letter exist, we will make them available to your client."
- c. Petitioner's letter dated September 6, 2007, which stated that Petitioner had been informed by a representative of Respondent Board that the documents that Petitioner requested did not exist.

By letter dated September 11, 2007, Mr. Van Buren informed Mr. Ostendorp that:

After Mr. Imura's first review of the documents, he sought additional documents. On February 26, 2006, I informed you that he could review all of those documents to the extent they existed. On March 8, 2006, he made his second inspection. That is the last we heard from him.

Regardless, the documents that exist can still be made available to him to review again at a convenient time and place subject to the same terms as before.

By letter dated November 2, 2007, Mr. Goodwin informed the undersigned Hearings Officer that Respondent Metropolitan had been acquired by another company and was no longer a viable business entity.

On November 15, 2007, a Pre-hearing Conference was conducted in the above-referenced matter. Petitioner appeared pro se, and Mr. Van Buren appeared on behalf of Respondent Board.

On December 14, 2007, the hearing was convened by the undersigned Hearings Officer. Petitioner appeared pro se, and Mr. Van Buren appeared on behalf of Respondent Board. After allowing the Petitioner to identify the specific issues that he intended to raise during the hearing, Petitioner reiterated that he was seeking to inspect the documents from Respondent Board that had not yet been provided pursuant to the terms of the Stipulation to Settle Petition for Hearing Relief.

Based upon the submittals of the parties, and upon the Petitioner's acknowledgment that the hearing was to determine whether Respondent Board complied with the terms of the Stipulation to Settle Petition for Hearing Relief (i.e. whether Respondent Board failed to provide Petitioner access to certain identified documents), the Hearings Officer concluded that the provisions of HRS §514A-121.5 did not confer original jurisdiction over the interpretation and enforcement of settlement agreements between the parties. Although the Stipulation to Settle Petition for Hearing Relief indicated that the Hearings Officer would continue to retain jurisdiction over the case until dismissed by the parties, because Petitioner sought to enforce the terms of the Stipulation to Settle Petition for Hearing Relief, the Stipulation to Settle Petition for Hearing Relief could not confer the undersigned Hearings Officer with jurisdiction over disputes arising from the interpretation of the Stipulation to Settle Petition for Hearing Relief. More specifically, HRS §514A-121.5(a) provides that the only matters that can be mediated are disputes involving the "interpretation or enforcement of the association of apartment owners' declaration, bylaws, or house rules," and if the mediation process is unsuccessful, these unresolved issues can be pursued through the contested case hearing process identified in HRS §514A-121.5(b). Accordingly,

IT IS HEREBY ORDERED THAT the above-referenced matter be dismissed, and that each party bear their respective attorney's fees and costs.

DATED: Honolulu, Hawai'i, January 19, 2008.

/s/ RODNEY A. MAILE

RODNEY A. MAILE
Senior Hearing Officer
Department of Commerce
and Consumer Affairs