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BEFORE THE STATE ETHICS COMMISSION

STATE OF HAWAII

STATE OF HAWAII
STATE ETHICS COMMISSION

HAWAII STATE ETHICS COMMISSION,)	Charge No. 12-Cg-4
)	Charge No. 12-Cg-7
Complainant,)	
)	FINDINGS OF FACT,
vs.)	CONCLUSIONS OF LAW,
)	AND DECISION AND ORDER;
KENNETH HOVANIAN,)	CERTIFICATE OF SERVICE
)	
Respondent.)	
)	

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND DECISION AND ORDER

Pursuant to Hawaii Revised Statutes ("HRS") § 84-31 and HRS chapter 91, the Hawaii State Ethics Commission ("Commission") convened a hearing on the matter of Hawaii State Ethics Commission vs. Kenneth Hovanian, Charge No. 12-Cg-4 and Charge No. 12-Cg-7, on Wednesday, October 16, 2013, at 9:00 a.m., at the Commission's office conference room located at 1001 Bishop Street, American Savings Bank Tower, Suite 960, Honolulu, Hawaii 96813.

Nancy C. Neuffer, Esq. and Leslie H. Kondo, Esq. appeared for Complainant Hawaii State Ethics Commission. Respondent Kenneth Hovanian, having been personally served with the Notice of Hearing on September 30, 2013, did not appear at the hearing.

The Commission has heard and carefully considered the testimony, evidence, and arguments of counsel presented at the hearing. Accordingly, based upon the competent and substantial evidence adduced at the hearing, the Commission, under the authority of HRS § 84-31 and in accordance with HRS chapter 91, hereby makes the following Findings of Fact, Conclusions of Law, and Decision and Order.

I do hereby certify that the foregoing is a full, true, and correct copy of the original on file in this office.

Andrea A. Durutani

Secretary, State Ethics Commission

I. FINDINGS OF FACT

1. Respondent Kenneth Hovanian ("Respondent") is and was at all times relevant herein a member of the Elevator Mechanics Licensing Board ("Board").
2. Respondent was appointed to a four-year term on the Board, beginning July 1, 2006, and ending July 30, 2010, and was reappointed to another four-year term on the Board, beginning July 1, 2010, and ending July 30, 2014.
3. As a member of the Board, Respondent was required to file an annual disclosure of financial interests ("financial disclosure statement") with the Commission.
4. Respondent filed financial disclosure statements with the Commission in 2007, 2008, and 2009. See Exhibits C-2, C-3, and C-4.

2011 Financial Disclosure Statement (Count I)

5. In 2011, Respondent was required to file a financial disclosure statement between January 1, 2011, and May 31, 2011 ("2011 financial disclosure statement").
6. Respondent failed to file his 2011 financial disclosure statement within the prescribed time or at any time thereafter.

2012 Financial Disclosure Statement (Count II)

7. In 2012, Respondent was required to file a financial disclosure statement between January 1, 2012, and May 31, 2012 ("2012 financial disclosure statement").
8. Respondent failed to file his 2012 financial disclosure statement within the prescribed time or at any time thereafter.

Attempts to Obtain Respondent's 2011 and 2012 Financial Disclosure Statements

9. The Commission's staff made numerous and repeated attempts to contact Respondent to obtain his 2011 and 2012 financial disclosure statements, via telephone, email, and letters and notices sent through regular and certified mail. Respondent did not respond to any letters, notices, emails or voicemail messages from the Commission's staff. Letters and notices that were sent to Respondent by certified mail were returned to the Commission's office as unclaimed by Respondent. See, e.g., Exhibits C-8, C-14, and C-15.

Service of Charges and Notice of Failure to File Financial Disclosure Statement and \$50 Penalty

10. On April 18, 2012, the Commission issued Charge No. 12-Cg-4 against Respondent for failure to file his 2011 financial disclosure statement within the prescribed time.
11. On September 28, 2012, the Commission issued Charge No. 12-Cg-7 against Respondent for failure to file his 2012 financial disclosure statement within the prescribed time.
12. On April 1, 2013, after failing to respond to previous letters and notices concerning his failure to file financial disclosure statements for 2011 and 2012, Respondent was personally served with copies of both charges and afforded an opportunity to submit a written response to the charges. See Exhibits C-8 and C-9.
13. Respondent did not respond to the charges.
14. On May 29, 2013, the Commission issued a Further Statement of Alleged Violation against Respondent for failure to file his 2011 and 2012 financial disclosure statements as alleged in Charge Nos. 12-Cg-4 and 12-Cg-7, respectively.

15. In a letter dated May 31, 2013, Respondent was notified by the Commission's staff that: (a) the Commission had filed a Further Statement of Alleged Violation against him; (b) Respondent had, pursuant to HRS § 84-31(b), twenty days after service of the Further Statement of Alleged Violation to respond in writing; and (c) failure to file an answer to the Further Statement of Alleged Violation would constitute a default, whereupon the Commission would set a time and place for a hearing. See Exhibit C-10.
16. In a "Notice of Failure to File Financial Disclosure Statement and \$50 Penalty" dated June 28, 2013, Respondent was notified by the Commission's staff that: (a) the Commission had not received his 2011 and 2012 financial disclosure statements; (b) a \$50 penalty was assessed against him for each financial disclosure statement that he failed to file for a total penalty of \$100; (c) the State Ethics Code still required him to file the delinquent financial disclosure statements; and (d) if Respondent failed to file the delinquent financial disclosure statements within ten days of service of the notice, an additional penalty of \$10 per day for each financial disclosure statement would be assessed against him until the financial disclosure statements were filed. See Exhibit C-11.
17. On August 10, 2013, Respondent was personally served with: (a) the May 31, 2013, letter notifying Respondent of the Further Statement of Alleged Violation; (b) the June 28, 2013, "Notice of Failure to File Financial Disclosure Statement and \$50 Penalty;" (c) a copy of the Further Statement of Alleged Violation; (d) a copy of Charge No. 12-Cg-4; and (e) a copy of Charge No. 12-Cg-7. See Exhibits C-10, C-11, and C-12.
18. Respondent did not file an answer to the Further Statement of Alleged Violation.

19. To the extent that any of the foregoing Findings of Fact also contain conclusions of law, they are hereby and shall be deemed incorporated into the Conclusions of Law.

II. CONCLUSIONS OF LAW

1. Article XIV of the Hawaii State Constitution ("Article XIV") expresses the belief of the people of Hawaii "that public officers and employees must exhibit the highest standards of ethical conduct" and in furtherance of this belief, mandates that the legislature adopt a code of ethics applicable to appointed and elected officers and employees of the State, "including members of . . . boards, commissions and other bodies." Haw. Const. Art. XIV.
2. Article XIV further prescribes that the code of ethics shall include financial disclosure provisions requiring elected officers, candidates for elective office, and such appointed officers and employees as provided by law to file public financial disclosures, and other public officials having significant discretionary powers as provided by law to file confidential financial disclosures. Haw. Const. Art. XIV.
3. The State Ethics Code, codified in HRS chapter 84 pursuant to the constitutional mandate of Article XIV, applies to all state employees, except judges and justices, see HRS § 84-2, and defines an "employee" as:

[A]ny nominated, appointed or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices, and judges.

HRS § 84-3 [emphasis added].

4. As a member of the Board, Respondent was at all times relevant herein an "employee" as defined in HRS § 84-3.
5. Respondent was at all times relevant herein subject to the provisions of the State Ethics Code. HRS § 84-2 providing that HRS chapter 84 "shall apply to every . . . employee . . . of the State . . . but excluding justices and judges.").
6. In a contested case hearing held pursuant to HRS § 84-31, the Commission's findings must be based upon competent and substantial evidence. HRS § 84-31(c).
7. The State Ethics Code requires that "[t]he members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory" file annually with the Commission a financial disclosure statement. HRS § 84-17(c)(9).
8. The annual financial disclosure statement required by the State Ethics Code must be filed between January 1 and May 31 of each year. HRS § 84-17(b)(1).
9. The terms of office of members appointed to Respondent's board are for periods exceeding one year pursuant to HRS § 26-34, which states that "the terms of . . . members [of each board and commission established by law] shall be for four years" and that "each term shall commence on July 1 and expire on June 30."
10. "Solely advisory" is defined as "a board or commission that can take no significant action to influence the administration of state programs or the exercise of state powers." Hawaii Administrative Rules § 21-1-2.
11. Pursuant to the elevator mechanics law, HRS chapter 448H, the Board's powers and duties include, but are not limited to, the following: adopt rules to carry out the purposes of HRS chapter 448H; develop and apply techniques and standards to insure qualified elevator

mechanics; prescribe that a nationally recognized examination, augmented with locally developed material, be used in testing for licensure; issue licenses to persons who meet the required qualifications; revoke or suspend licenses pursuant to hearings where persons are determined to have failed to conform to the requirements of HRS chapter 448H or the Board's rules; establish and carry out procedures to insure that persons licensed as elevator mechanics will comply with the requirements of HRS chapter 448H and the Board's rules; and investigate and take appropriate action with respect to any complaint that any person licensed as an elevator mechanic has failed to comply with HRS chapter 448H and the Board's rules. HRS § 448H-5.

12. The Board's functions are not solely advisory in that the Board exercises significant authority and takes significant action with respect to the licensure and regulation of elevator mechanics by the State.
13. As a member of the Board and an employee as defined in HRS § 84-3, Respondent was required to file an annual financial disclosure statement with the Commission for the year 2011, between January 1, 2011, and May 31, 2011.
14. As a member of the Board and an employee as defined in HRS § 84-3, Respondent was required to file an annual financial disclosure statement with the Commission for the year 2012, between January 1, 2012, and May 31, 2012.
15. Failure of an employee to file a financial disclosure statement as required by HRS § 84-17 constitutes a violation of HRS chapter 84. HRS § 84-17(i).
16. By failing to file his 2011 financial disclosure statement with the Commission within the prescribed period, Respondent violated HRS § 84-17. (Count I)

17. By failing to file his 2012 disclosure statement with the Commission within the prescribed period, Respondent violated HRS § 84-17. (Count II)
18. An employee who fails to file a financial disclosure statement when due shall be assessed an administrative fine of \$50. The Commission shall notify a person by registered mail of the failure to file and the financial disclosure statement shall be submitted to the Commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a financial disclosure statement has not been filed within ten days of the due date, an additional administrative fine of \$10 for each day a disclosure remains unfiled shall be added to the administrative fine. Any administrative fine for late filing shall be in addition to any other action the Commission may take for violations of the State Ethics Code. HRS § 84-17(i).
19. Respondent, having been personally served with, among other things, written notice of the penalties and additional fines for violations of HRS § 84-17 on August 10, 2013, and having failed to file his delinquent financial disclosure statements within ten days of service of the notice, the additional administrative fine of \$10 per day for each day Respondent's 2011 and 2012 financial disclosure statements remain unfiled shall commence on August 21, 2013 and shall continue to be assessed until the date the Commission's decision is filed. HRS § 84-17(i).
20. To the extent that any of the foregoing Conclusions of Law also contain findings of fact, they are hereby and shall be incorporated into the Findings of Fact.

III. DECISION AND ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission hereby determines as follows:

1. Respondent committed two (2) violations of HRS § 84-17. (Count I and Count II).
2. An administrative fine of ONE THOUSAND NINE HUNDRED FORTY DOLLARS (\$1,940.00) for the violations committed by Respondent is appropriate and shall be imposed. HRS § 84-17(i).
3. The administrative fine is calculated pursuant to HRS § 84-17(i) as follows:

For failure to file a financial disclosure statement in 2011:

Initial fine:	\$ 50
\$10 per day additional fine 08/21/2013 - 11/20/13 (92 days):	\$ 920

For failure to file a financial disclosure statement in 2012:

Initial fine:	\$ 50
\$10 per day additional fine 08/21/2013 - 11/20/13 (92 days):	<u>\$ 920</u>

TOTAL ADMINISTRATIVE FINE: \$1,940

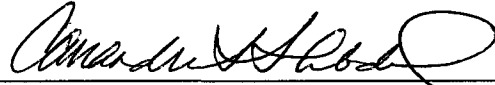
THEREFORE, IT IS HEREBY ORDERED that an administrative fine in the total amount of ONE THOUSAND NINE HUNDRED FORTY DOLLARS (\$1,940.00) is imposed against Respondent Kenneth Hovanian; and

IT IS FURTHER ORDERED that Respondent shall forward a check in the amount of ONE THOUSAND NINE HUNDRED FORTY DOLLARS (\$1,940.00) payable to the "State of Hawaii" to the Hawaii State Ethics Commission's office no later than sixty (60) days from the date of this Decision and Order. See HRS § 84-39 (stating that

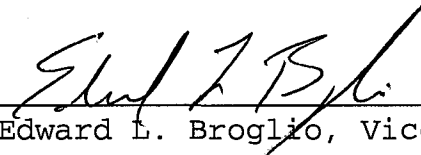
all fines collected under this section shall be deposited in the State's general fund).

DATED: Honolulu, Hawaii, November 20, 2013.

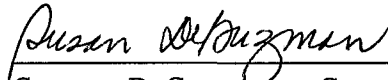
HAWAII STATE ETHICS COMMISSION



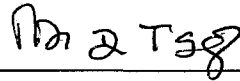
Cassandra J. Leolani Abdul, Chair



Edward L. Broglio, Vice Chair



Susan DeGuzman, Commissioner



Ruth D. Tschumy, Commissioner



David O'Neal, Commissioner

EXHIBIT "A"
BEFORE THE HAWAII STATE ETHICS COMMISSION
STATE OF HAWAII

HAWAII STATE ETHICS COMMISSION,)	Charge No. 12-Cg-4
)	Charge No. 12-Cg-7
Complainant,)	
)	CERTIFICATE OF SERVICE
vs.)	
)	
KENNETH HOVANIAN,)	
)	
Respondent.)	

CERTIFICATE OF SERVICE

I hereby certify that on this date, a certified copy of the foregoing document, Findings of Fact, Conclusions of Law, and Decision and Order, was served upon the following individual by U.S. first class mail, postage prepaid, as noted below:

Mr. Kenneth M. Hovanian
92-535 Akaawa Street
Kapolei, Hawaii 96707

Respondent

I also hereby certify that on this date, a certified copy of the foregoing document, Findings of Fact, Conclusions of Law, and Decision and Order, was served upon the following individual by personal delivery and email, as noted below:

Nancy C. Neuffer, Esq.
1001 Bishop Street, Suite 970
Honolulu, Hawaii 96813 Email: hov-chargecounsel@hawaiiethics.org

Charge Counsel for Complainant

DATED: Honolulu, Hawaii, November 20, 2013.

A handwritten signature in black ink, appearing to read 'Susan D. Yoza', written over a horizontal line.

Susan D. Yoza
Virginia M. Chock
Commission Counsel for
Hawaii State Ethics Commission