HAWAII
STATE
ETHICS
COMMISSION
State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

Resolution of Charge 2017-4

(COMPL-C-16-00438)

Hawaii Tourism Authority Chief Operating Officer's Alleged Violations of Fair Treatment Law, Gifts Law, and Gifts Reporting Law

October 2, 2017

The Hawaii State Ethics Commission ("Commission") has resolved a Charge issued against Randolf Baldemor, Chief Operating Officer, Hawaii Tourism Authority ("HTA"), for alleged violations of the State Ethics Code, Hawaii Revised Statutes ("HRS") chapter 84.

The alleged violations came to the attention of the Commission by way of an anonymous complaint.

I. Facts

Respondent Baldemor admitted the following facts:

a. Respondent Baldemor, at all times relevant herein, was employed by the Hawaii Tourism Authority ("HTA"), a state agency, as its Chief Operating Officer ("COO"). He joined HTA in 2015. He has held numerous high-level positions with the State of Hawaii, including as Deputy Director at the Department of Human Resources Development, Director of Strategic Initiatives at the Governor's office, Deputy Director with the Department of Taxation, and Deputy Chief Information Officer for the Office of Information Management & Technology.

b. Respondent Baldemor, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Baldemor is required to comply with the State Ethics Code.

c. Respondent Baldemor and other HTA personnel are required to travel for state business in the performance of their official duties and, over the course of his employment at HTA, Respondent Baldemor has flown extensively on various airlines, in addition to the airlines mentioned herein.

d. On all flights referenced herein, Respondent Baldemor was traveling in the performance of his official duties.

e. According to policy and practice, all air travel and hotel arrangements are booked and paid by HTA. Air tickets are reserved and paid at the economy fare.

f. On the following occasions, Respondent Baldemor accepted courtesy upgrades to Business Class when traveling on state business:

    i. Respondent Baldemor accepted an upgrade to Business Class from Japan Airlines ("JAL") on a round-trip flight from Honolulu to Tokyo, Japan, on August 31, 2015, returning on September 4, 2015. The ticket came with access to JAL's premier class lounge, and Respondent Baldemor accessed the lounge on his way to Japan and again returning from Japan.

    ii. Respondent Baldemor accepted an upgrade to Business Class from JAL on a round-trip flight from Honolulu to Guangzhou, China (via Tokyo) on October 10, 2015, returning on October 16, 2015. The ticket came with access to JAL's premier class lounge, and Respondent Baldemor accessed the lounge on his outbound and return trips.

    iii. Respondent Baldemor accepted an upgrade to Business Class from China Airlines on a round-trip flight from Honolulu to Hong Kong (via Tokyo and Taipei) on February 27, 2016, returning to Honolulu on March 5, 2016.

    iv. Respondent Baldemor traveled from Honolulu to London, England, on May 7, 2016; he left Frankfurt, Germany, on May 13, 2016 and returned to Honolulu on May 14, 2016. Rather than taking the more direct travel route to Europe from Honolulu – that is, flying roughly 8,000 miles via the continental United States – Respondent Baldemor routed his travel via Japan, a route of roughly 10,000 miles, and all "comparable" flights used to justify the purchase of the flight (as required by the State) were via Japan rather than via the continental United States. Pursuant to Respondent Baldemor's direction, an HTA administrative assistant solicited a flight upgrade for him from JAL; Respondent Baldemor accepted upgrades to Business Class from JAL from Honolulu to Tokyo and Tokyo to Honolulu, and accepted an upgrade to premium economy on the flights from Tokyo to London and from Frankfurt to Tokyo. The tickets came with access to JAL's premier class lounge, and Respondent Baldemor accessed the lounges four times along the journey – twice on the way to London (on May 7 and May 9, 2016), and twice on the way back from Frankfurt (on May 13 and 14, 2016).

v. Respondent Baldemor accepted an upgrade to Business Class from JAL on a flight from Honolulu to Hong Kong (via Tokyo) on May 22, 2016; apparently as part of the same itinerary, he accepted upgrades to Business Class on a flight from Hong Kong to Tokyo on May 25, 2016, and on a flight from Osaka to Shanghai, China, on May 29, 2016, after which he returned to Honolulu (in coach) on June 1, 2016. The tickets came with access to JAL's premier class lounge, and Respondent Baldemor accessed the lounges four times along the journey – twice on the way to Hong Kong (on May 22 and 23, 2016), once on the way from Osaka, Japan, to Shanghai (on May 29, 2016), and once on the way from Tokyo to Honolulu (on June 1, 2016). Pursuant to Respondent Baldemor's direction, an HTA administrative assistant solicited the flight upgrades for him from JAL.

vi. Respondent Baldemor accepted an upgrade to Business Class from Air China on a round-trip flight from Honolulu to Beijing, China, on June 11, 2016, including an interim leg from Hong Kong to Beijing on June 18, 2016.

vii. Each of the above travel upgrades accepted by Respondent Baldemor had a value in excess of $200.

g. Respondent Baldemor also received a courtesy upgrade from Starwood Hotels during a three-night stay in March 2016. This upgrade was valued at approximately $150.
h. Respondent Baldemor did not report any of the above flight upgrades that he accepted by filing a Gifts Disclosure Statement with the Commission by the statutory deadline of June 30, 2016 (to cover the reporting period of June 1, 2015 through June 1, 2016).

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.

B. Application of the State Ethics Code to Respondent Baldemor

According to HTA's website, HTA is "Hawaii's state tourism agency." HTA is "a body corporate and a public instrumentality of the State" and is placed within the Department of Business, Economic Development, and Tourism for administrative purposes only. HRS § 201B-2(a). HTA's responsibilities include, but are not limited to, "promoting, marketing, and developing the tourism industry in the State." HRS § 201B-7(b)(2). The powers and functions granted to and exercised by HTA are expressly declared to be "public and governmental functions, exercised for a public purpose, and matters of public necessity" pursuant to HRS § 201B-14.

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[1] Hawaii State Constitution, Art. XIV.

[2] HRS Chapter 84, Preamble.

As an employee of HTA, Respondent Baldemor was a state employee for purposes of the State Ethics Code.[3] As a state employee, Respondent Baldemor is required to comply with the State Ethics Code.

1. Fair Treatment and Gifts

HRS § 84-13 (the "Fair Treatment Law") prohibits a state employee from using his or her state position to obtain unwarranted privileges, advantages, or benefits for the employee or others.

The Gifts Law of the State Ethics Code, HRS § 84-11, prohibits a state employee from soliciting, accepting, or receiving, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, 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.

It is the State's policy that employees travel by coach class when traveling on state business. The State's travel rules provide that "[t]ravel route(s) shall be the most economical and direct route(s) available to the point(s) of business destination." Hawaii Administrative Rules ("HAR") § 3-10-6. See also HAR § 3-10-8(b) ("Unless otherwise justified and approved by the governor, travel shall be by the most economical means consistent with time available and urgency of the trip.").

In Advisory Opinion No. 95-1, the Commission determined that travel upgrades for state officials traveling on state business are a personal benefit rather than a benefit to the State and that HRS § 84-11 and § 84-13 prohibited the solicitation and acceptance of travel upgrades by state officials.

The State's travel policies are particularly important for HTA personnel, because HTA awards contracts to – and thus takes official action regarding – multiple airlines:

- In 2014, HTA reported a contract with JAL valued at more than $1,000,000 over the life of the contract. HTA, 2014 Annual Report to the Hawai'i State Legislature, p. 52.

- In 2014, HTA reported a contract with Hawaiian Airlines valued at more than $100,000. HTA, 2014 Annual Report to the Hawai'i State Legislature, p. 52.

- In 2015, HTA reported a contract with Hawaiian Airlines valued at more than $1,000,000 over the life of the contract; two additional contracts with Hawaiian Airlines valued at more than $100,000 each; and contracts with Alaska Airlines

[3] HRS § 84-3.

and Virgin America valued at more than $100,000 each. HTA, 2015 Annual Report to the Hawaiʻi State Legislature, p. 51.

- In 2016, HTA reported a contract with Virgin America valued at more than $100,000. HTA, 2016 Annual Report to the Hawaiʻi State Legislature, p. 51.

There are circumstances in which a state employee may fly in a higher class of service. For example, a state employee who earns frequent flyer miles by using a personal credit card for personal purchases may use these miles to obtain an upgrade to a higher class of service. Likewise, a state employee may use personal funds to purchase an upgrade. Absent extraordinary circumstances, however, the State achieves no benefit in having its employees travel in First Class or Business Class; that is, there is virtually never a state purpose in soliciting or accepting a gift of an upgrade in service. Instead, the improvement in service is a personal benefit to the employee receiving that upgrade.

The Commission investigated Respondent Baldemor's actions from 2015 through 2017 and discovered that, on multiple occasions, Respondent Baldemor accepted courtesy upgrades from airlines. Respondent Baldemor argues that HTA employees had a custom or practice of soliciting courtesy upgrades from airlines, and that this custom or practice pre-dated his tenure with HTA. In this respect, Respondent Baldemor is correct: several HTA employees did engage in an inappropriate and unlawful practice of accepting upgrades prior to Respondent Baldemor's arrival at HTA. Under the Ethics Code, however, it is no excuse that others engage in a similar practice; each employee has an independent obligation to follow the Ethics Code, regardless of what other employees do. Furthermore, Respondent Baldemor directed his administrative assistants to solicit upgrades on flights when making travel arrangements for him.[4]

The Commission believes that, by soliciting and/or accepting "courtesy" upgrades from airlines and a hotel while traveling on state business, Respondent Baldemor likely violated the Fair Treatment Law and Gifts Law. Particularly relevant in this case, the solicitation and acceptance of "gifts" from state contractors or potential contractors raise serious concerns under the Ethics Code, undermining the trust placed in government officials by the people of Hawaii.

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[4] The Commission did not receive any evidence to suggest that the airlines involved in this matter intended or expected that these upgrades would influence Respondent's official actions; further, although the Ethics Code regulates the behavior of state employees, it does not regulate the behavior of private entities such as the airlines discussed herein. Although the Commission concludes that Respondent likely violated the Ethics Code, the Commission has no evidence or reason to suggest that the airlines mentioned herein acted unlawfully or improperly.

2. Gifts Reporting

The Gifts Reporting Law of the State Ethics Code, HRS § 84-11.5, requires every state employee to file a gifts disclosure statement on June 30 of each year if the following conditions are met: (1) The employee "received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of $200, whether the gift is in the form of money, service, goods, or in any other form"; (2) the source of the gift or gifts has interests that may be affected by the employee's official action; and (3) the gift is not exempted by HRS § 84-11.5(d) from the reporting requirements. HRS § 84-11.5. The law provides that "[t]he report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report." HRS § 84-11.5(b). The law further provides that the report shall contain: (1) a description of the gift; (2) a good faith estimate of the value of the gift; (3) the date the gift was received; and (4) the name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received. HRS § 84-11.5(c).

Respondent Baldemor did not file gifts reports for any of the above-referenced flight upgrades as required by HRS § 84-11.5 until after the Commission notified HTA of its investigation in September 2016. As such, the Commission believes that Respondent likely violated the Gifts Reporting Law.

III. Resolution of Charge

The Commission issued a Charge against Respondent Baldemor on August 17, 2017.

The Commission believes that, based on the facts admitted above,[5] Respondent Baldemor likely violated the Gifts Law (HRS § 84-11), the Gifts Reporting Law (HRS § 84-11.5), and the Fair Treatment Law (HRS § 84-13).

Given the numerous likely violations of the State Ethics Code, the Commission believes it is reasonable, fair, and in the public interest to resolve this investigation by (1) issuing this Resolution of Charge, and (2) requiring Respondent Baldemor to pay an administrative penalty of $6,000 to the State of Hawaii.

Respondent Baldemor cooperated with the Commission in its investigation and has not previously been the subject of a Commission charge or investigation. The resolution of the Charge does not constitute an admission by Respondent Baldemor, or a determination by the Commission, that Respondent Baldemor violated the State Ethics Code. As previously stated, the Commission believes it is fair, reasonable, and in the public interest to resolve this matter without further administrative action.

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[5] This Resolution does not make formal findings, but relies on the facts admitted by Respondent Baldemor.

Dated OCT 02 2017

Reynaldo D. Graulty, Chair
Hawaii State Ethics Commission

Dated OCT 02 2017

David O'Neal, Vice Chair
Hawaii State Ethics Commission

Dated OCT 02 2017

Susan N. DeGuzman, Commissioner
Hawaii State Ethics Commission

Dated OCT 02 2017

Ruth D. Tschumy, Commissioner
Hawaii State Ethics Commission

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Melinda Wood, Commissioner
Hawaii State Ethics Commission