



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

Resolution of Charge **2020-01**

(COMPL-C-19-00074)

Hawai‘i Occupational Safety and Health Division, Department of Labor and Industrial Relations, Occupational Health Branch Manager’s Alleged Violations of Fair Treatment Law

January 22, 2020

The Hawai‘i State Ethics Commission (“Commission”) has resolved a Charge against Tin Shing Chao (“Respondent Chao”), Occupational Health Branch Manager, Hawai‘i Occupational Safety and Health Division (“HIOSH”), Department of Labor and Industrial Relations (“DLIR”), for alleged violations of the State Ethics Code, Hawai‘i Revised Statutes (“HRS”) chapter 84.

I. Facts

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

- a) Respondent Chao, at all times relevant herein, was employed by DLIR, a state agency, as the Occupational Health Branch Manager for HIOSH.
- b) Respondent Chao, at all times relevant herein, was a state employee as defined in HRS § 84-3. As a state employee, Respondent Chao was required to comply with the State Ethics Code.
- c) As the Occupational Health Branch Manager, Respondent Chao supervises several Environmental Health Specialists (“EHSs”) who work to enforce Hawaii’s workplace health and safety laws. As such, Respondent Chao has the power to hire EHSs and to recommend promotion and discipline for those employees.
- d) EHSs must travel to worksites throughout Hawai‘i to conduct inspections, and must be able to arrive within one hour of the assignment per HIOSH policy. While there is no requirement for an EHS to own her/his own vehicle under the HIOSH position description (“PD”) for EHSs, in practice, employees

conducting inspections typically have access to a personal vehicle upon passing probation. The PD further states that “access to a vehicle is preferred.”

- e) In late 2016 and early 2017, Respondent Chao was supervising two probationary EHSs who did not own personal vehicles. Respondent Chao informed both employees that they were required to have personal vehicles to perform their jobs as EHSs, per his understanding of the job requirements and customary practice within HIOSH, and the EHSs were therefore under the impression that ownership of a personal vehicle was required if they (the subordinates) wished to continue working for HIOSH.
- f) Mr. Chao is acquainted with Tao “Kevin” Qiu, the owner and manager of AutoBiz, which is a pre-owned automobile dealership. Mr. Chao is acquainted with Mr. Qiu through Mr. Qiu’s parents.
- g) Around February 2017, Respondent Chao recommended AutoBiz to a subordinate, probationary EHS. Respondent Chao then drove this employee to AutoBiz, in Respondent Chao’s personal car, during the work day; Respondent Chao claims that this trip to AutoBiz occurred after an on-site inspection, during Respondent Chao’s (and the subordinate employee’s) lunch hour. The subordinate employee alleges that Respondent Chao was present while the employee was looking at and negotiating the purchase of a vehicle from AutoBiz, including while the dealership ran the employee’s credit; that Respondent Chao pressured the employee to purchase a car from AutoBiz; and that Respondent Chao pressured the employee to purchase a more expensive vehicle than the employee could afford. Respondent Chao disputes the allegation that he pressured the employee to purchase a car from AutoBiz or that he pressured the employee to purchase a more expensive car from AutoBiz. The subordinate employee further alleges that the employee left HIOSH because the employee could not make the payments on this car on the employee’s HIOSH salary.
- h) Around May 2017, Respondent Chao recommended AutoBiz to a second subordinate, probationary EHS. Again, Respondent Chao drove this employee to AutoBiz, in Respondent Chao’s personal car, during the work day; Respondent Chao claims that this trip to AutoBiz occurred after an on-site inspection, during Respondent Chao’s (and the subordinate employee’s) lunch hour. This second subordinate employee likewise alleges that Respondent Chao was present while the employee was looking at and negotiating the purchase of a vehicle from AutoBiz, and that Respondent Chao pressured the employee to purchase a car from AutoBiz. Again, Respondent Chao disputes the allegation that he pressured the employee to purchase a car from AutoBiz.

- i) Mr. Chao contends that he received no remuneration, consideration or other benefit from the employees' respective purchase of vehicles from AutoBiz. Mr. Chao further contends that his sole intention was to assist his subordinates in purchasing vehicles at their request, and that he did not intend to pressure his subordinates into purchasing a car from AutoBiz.

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 Hawai‘i 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 Chao

As a DLIR employee, Respondent Chao is a state employee for purposes of the State Ethics Code.³ As a state employee, Respondent Chao is required to comply with the State Ethics Code.

HRS § 84-13(a) (the Fair Treatment Law) prohibits a state employee from using the employee’s state position to obtain unwarranted privileges, advantages, or benefits for the employee or others. A subsection of the Fair Treatment Law, HRS § 84-13(a)(3), prohibits the use of state resources for private business purposes.

The Commission investigated Respondent Chao’s actions and believes that Respondent Chao likely violated the Fair Treatment Law by recommending AutoBiz to his subordinates, and his other actions described in Section I. Although Respondent

¹ Hawai‘i State Constitution, Art. XIV.

² HRS Chapter 84, Preamble.

³ HRS § 84-3.

Chao may not have intended to pressure his subordinates to purchase vehicles from an acquaintance's business, his subordinates felt pressured to do so. Respondent Chao went beyond the kinds of casual comments that are common in the workplace (e.g., informing a co-worker of a sale on certain items at a large retailer); instead, Respondent Chao drove his subordinate employees to a small business owned by an acquaintance, then remained on-site while the employees shopped for vehicles, while the employees were under the mistaken impression that they would lose their jobs if they did not purchase a car. Notwithstanding Respondent Chao's intentions, both subordinate employees reported feeling pressured by Respondent Chao to purchase a vehicle from AutoBiz. Supervisors must be sensitive to the serious power they have over subordinate employees; they may not pressure subordinate employees into spending personal funds in a certain way or at a specific business, particularly when the supervisor has a personal connection to that business.

III. Resolution of Charge

The Commission believes that, based on the facts admitted above,⁴ Respondent Chao likely violated the Fair Treatment Law (HRS §§ 84-13(a), 84-13(a)(3)).

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 by (1) issuing this Resolution of Charge, and (2) requiring Respondent Chao to pay an administrative penalty of \$1,000.00 to the State of Hawai'i.

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