

The Complaint alleges that at the May 27, 2015 Makakilo/Kapolei/Honokai Hale Board No. 34 meeting ("May 27, 2015 meeting"), Respondents changed the "Rules of Speaking" to require the public to testify on all agenda items at the beginning of the meeting agenda and enforced the Rules of Speaking to the detriment of the public.

The Complainant alleges that Respondents violated Sections 2-13-101, Purpose; 2-13-102, General powers, duties, and functions of the boards; 2-13-104, Standards of Conduct; and 2-13-106, Community forum limitations, of the 2008 Neighborhood Plan ("Plan"), as amended.

The Commission, having reviewed the Complaint, Response, witnesses, exhibits and other documentary evidence presented by the parties; having considered the entire record and files herein; and having heard testimony and considered the arguments of the parties; makes the following Findings of Fact, Conclusions of Law, Decision and Order.

FINDINGS OF FACT

1. The Complaint was filed on May 28, 2015, pursuant to the provisions of Section 2-18-201(a)(3) of the Plan.

2. At all times relevant herein, Respondent Evelyn Souza ("Respondent Souza") was the Chair of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34.

3. At all times relevant herein, Respondent Dudley was the First Vice-Chair of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34.

4. On May 29, 2015, Respondents were notified of the Complaint and provided an opportunity to respond to the allegations of the Complaint.

5. The Commission received a timely response from Respondent Dudley on June 1, 2015. The Commission also received an untimely Response from Respondent Souza on August 8, 2015. The Commission received further information from Respondents on August 13, 2015 and August 14, 2015. Respondents denied all allegations and asserted that they acted properly by requiring all public comments to be done at the beginning of the agenda in order to prevent Complainant from disrupting the meeting.

6. On July 29, 2015, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the Respondent via certified mail, return receipt requested.

7. On August 24, 2015, the Commission received a letter from Respondent Souza which informed the Commission that she would not be able to attend the hearing and requesting a continuance. A copy of the letter was provided to Complainant who objected to the request.

8. The Commission denied Respondent Souza's request, but accepted her letter as evidence in support of her position.

9. The Commission finds that at the May 27, 2015 meeting, Respondents unilaterally and improperly promulgated a new rule which required all public comments to be made at the beginning of the agenda.

10. The Commission further finds that Respondents unilaterally changed the rules of speaking in order to single out and specifically prevent Complainant from speaking and asking questions during the meeting.

11. The Commission further finds that Respondent Dudley admitted that "The whole reason for doing it this way was to keep Michael Golojuch Jr. from disrupting the meeting repeatedly. It worked."

12. The Commission further finds that in his response, Respondent Dudley accused Complainant of "trying to destroy meetings by getting up to the mike for every issue on the agenda."

13. The Commission further finds that there is a history of personal conflict and animosity between Complainant and Respondents.

14. With respect to Section 2-13-101, Purpose, this is an enabling and general function section of the Plan and cannot be violated, and the Commission dismisses such;

15. With respect to Section 2-13-102, General powers, duties, and functions of the boards, this is an enabling and general function section of the Plan and cannot be violated, and the Commission dismisses such;

16. With respect to Section 2-13-106, Community forum limitations, this is an enabling and general function section of the Plan and cannot be violated, and the Commission dismisses such;

17. Section 2-13-104, Standards of Conduct, of the Plan requires that all board members shall demonstrate the highest standards of ethical conduct, shall hold their offices for the benefit of the public, shall perform their duties without bias and regardless of person considerations, and shall treat all persons equally.

18. Section 2-14-118, Discussion, of the Plan requires that the Board afford all interested persons an opportunity to present oral testimony and allows the board to regulate testimony by promulgating rules.

19. The Commission finds that Michael Golojuch, Jr., Complainant in Complaint No. 2015-04 has presented evidence to support his allegations that Respondents violated Section 2-13-104, Standards of Conduct.

20. The Commission finds that Respondents changed the rules of speaking to specifically prevent Complainant from

testifying on agenda items and demonstrated bias towards Complainant and specifically targeted him for unequal treatment.

21. The Commission further finds that by unilaterally changing the rules of speaking to prevent Complainant from testifying on agenda items, Respondents allowed their personal consideration, i.e., their apparent dislike of Complainant, to affect the discharge of their duties as the Chair and Vice-Chair of the neighborhood board.

22. The Commission further finds that the new rules of speaking, which were unilaterally implemented by Respondents on May 27, 2015, were not properly voted upon or promulgated by the Board in violation Section 2-14-118, Discussion, of the Plan.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-101(a)(1) of the Plan.

2. The parties were properly noticed pursuant to HRS Sections 91-9 and 91-9.5.

3. This hearing was properly conducted in accordance with HRS Chapter 91 and Section 2-18-102 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-102 of the Plan and the Commission has the authority to review a Neighborhood Board and/or a Neighborhood Board member's action(s) and issue sanctions in accordance with Sections 2-18-102 and 2-18-104 of the Plan.

5. Pursuant to HRS Section 91-10(5), the Complainant has the burden of proof including the burden of producing evidence as well as the burden of persuasion by a preponderance of the evidence.

DECISION AND ORDER

Based upon the foregoing, the Commission hereby finds that on May 27, 2015, the Respondents Souza, Chair, and Dudley, First Vice Chair, of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34, did violate Section 2-13-104, Standards of Conduct, of the 2008 Neighborhood Plan, as amended, as alleged in Complaint No. 2015-04.

Based upon the foregoing, the Commission hereby also finds that on May 27, 2015, the Respondents Souza, Chair, and Dudley, First Vice Chair, of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34, did violate Section 2-14-118, Discussion, of the 2008 Neighborhood Plan, as amended.

The Commission further finds that Respondents Souza, Chair, and Dudley, First Vice Chair, of the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34, did not violate Sections 2-13-101, Purpose, or 2-13-102, General powers, duties, and functions of the boards, or 2-13-106, Community forum limitations, of the Plan, and hereby dismisses said allegations alleged in Complaint No. 2015-04.

Therefore, it is hereby ordered in accordance with Section 2-18-104 of the 2008 Neighborhood Plan, as amended, that the following sanction shall be ordered in Complaint No.

2015-04:

Respondent Souza shall be suspended from participation on the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 for a period of thirty (30) calendar days, with any board meetings missed during the period of suspension to be counted as an absence in accordance with Section 2-18-104(b)(3) of the Plan. The thirty (30) day suspension period shall not fall on a recess month and shall be determined by the Executive Secretary within twenty (20) days of this decision.

Additionally, Respondent Dudley shall be suspended from participation on the Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 for a period of thirty (30) calendar days, with any board meetings missed during the period of suspension to be counted as an absence in accordance with Section 2-18-104(b)(3) of the Plan. The thirty (30) day suspension period shall not fall on a recess month and shall be determined by the Executive Secretary within twenty (20) days of this decision.

Additionally, Respondents Souza and Dudley shall be issued a letter of reprimand by the Neighborhood Commission Chairperson. Such letter shall be read into the record at the

first noticed Board meeting following the Respondents' suspensions.

DATED: Honolulu, Hawaii, _____.

NEIGHBORHOOD COMMISSION

By  _____
RUSSELL YAMANOHA
Its Chair