

BEFORE THE NEIGHBORHOOD COMMISSION
CITY AND COUNTY OF HONOLULU

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CITY AND COUNTY OF HONOLULU
2010 AUG 10 PM 3:50

In the Matter of the)
Complaint of)
MARCIE-ANN MICHIKO)
LEHUAOKALANI NAGATA,)
Complainant,)
Against KURT FEVELLA, Member of Ewa)
Neighborhood Board No. 23,)
Respondent.)

Complaint #0911-23-19

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

I certify that this is a full, true and correct
copy of the original document on file with
The Neighborhood Commission Office,
City and County of Honolulu.

Signature

AUG 10 2010

Date

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

This Complaint came on for hearing at a Special Meeting of the Neighborhood Commission held on July 26, 2010, at 7:00 p.m., in Honolulu Hale, Council Committee Room, 2nd Floor, City and County of Honolulu, 530 South King Street, Honolulu, Hawaii 96813.

Complainant MARCIE-ANN MICHIKO LEHUAOKALANI NAGATA ("Complainant"), *pro se*, appeared on her own behalf. Respondent KURT FEVELLA ("Respondent"), *pro se*, appeared on his own behalf.

Complainant alleged in her November 23, 2009 complaint that Respondent violated the 2008 Neighborhood Plan ("the Plan") by failing to stop community members from harassing her about her residency.

The Commission heard the testimony presented by the parties and the papers submitted, discussed the matter, and with the advice of counsel, finds as follows:

FINDINGS OF FACT

1. The Complaint was filed on November 23, 2009, pursuant to the provisions of Section 2-18-201 (a)(3) of the Plan.
2. At all times relevant herein, Complainant was a member of Ewa Neighborhood Board No. 23.
3. At all times relevant herein, Respondent was the Board Chair.
4. Section 2-18-201(d) of the Plan requires a respondent to file a written response to a recommendation within forty-five (45) calendar days after the date a copy of the complaint was sent to the respondent. The deadline may be extended by the Commission or its designee if the respondent submits valid reasons in writing prior to the response deadline.
5. The response deadline in this matter was January 11, 2009. Respondent did not request an extension of said deadline, in writing or otherwise, prior to the response deadline and no response was received from Respondent.
6. Section 2-18-201(e) of the Plan provides that if Respondent fails to timely file a response, any allegation contained in the recommendation is deemed admitted by Respondent.
7. Respondent failed to file a timely response to the Complaint.
8. Section 2-14-117 of the Plan requires all board members to promote and preserve the order and decorum of the board proceedings.
9. On July 9, 2010, in accordance with Hawaii Revised Statutes ("HRS") Sections 91-9 and 91-9.5, notice of the hearing was provided to the parties via certified mail, return receipt requested.

10. Although Respondent claimed that he did not receive the hearing notice, he received notification from the postal service of the certified letter and failed to retrieve it from the post office.

11. Respondent did not intend to avoid service of the certified letter.

12. Respondent was informed of the hearing several days prior to the hearing date but did not request an extension of the hearing date prior to appearing at the hearing.

13. At the November 12, 2009 board meeting, a community member questioned Complainant about her residency. Specifically, Complainant was questioned about whether she resided in Ewa Beach or in Mililani.

14. Complainant answered the question but the community member continued to question her.

15. Complainant felt that the questioning was harassing.

16. Respondent did not stop the community member from questioning Complainant about her residency.

17. The remaining Board members did not stop the community member from questioning Complainant about her residency.

18. Section 2-14-117 of the Plan requires all Board members to promote and preserve the order and decorum of the Board's proceedings.

CONCLUSIONS OF LAW

1. The Complaint was filed in accordance with the provisions of Section 2-18-201 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 2-18-203 of the Plan.

4. This matter is properly before the Commission pursuant to Section 2-18-203 of the Plan and the Commission has the authority to review a board and/or board member's action(s) and issue sanctions in accordance with Sections 2-18-203 and 2-18-204 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.

6. No response to the complaint was filed by Respondent. Therefore, in accordance with Section 2-18-201(e), the factual allegations of the complaint are deemed admitted by Respondent.

7. With respect to Section 2-14-117 of the Plan, the Commission finds that Respondent did violate the plan by failing to maintain order and decorum.

8. However, the Commission finds that there are mitigating circumstances, specifically, that the entire Board failed to assist the Respondent in maintaining order and decorum.

9. Despite the technical violation of the Plan, the Commission further finds that in light of the forthcoming training session required for all Board members, including Respondent, and the sanctions issued previously against the entire Board, any further action and/or sanction is unnecessary.

DECISION AND ORDER

Based upon the foregoing, the Complaint filed by Complainant MARCIE-ANN MICHIKO LEHUAOKALANI NAGATA, on November 23, 2009, is hereby

SUSTAINED, however, under the circumstances no further action and/or sanction will be imposed on Respondent.

DATED: Honolulu, Hawaii, AUG 10 2010 .

NEIGHBORHOOD COMMISSION

By 
Brendan Bailey
Its Chair

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