

CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

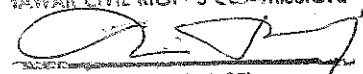
WILLIAM D. HOSHIJO, ) Docket No. 13-001-E-RH-SH-R  
Executive Director, on )  
behalf of the complaint ) FINAL DECISION AND ORDER;  
filed by KAY LORRAINE BATE, ) DECLARATION OF ARTEMIO C. BAXA  
)  
and )  
)  
KAY LORRAINE BATE, )  
)  
Complainant-Intervenor, )  
)  
vs. )  
)  
RESEARCH INSTITUTE FOR )  
HAWAII.USA and CHRISTOPHER )  
DAMON HAIG, as an individual, )  
)  
Respondents. )  
)  
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FINAL DECISION AND ORDER

This case involves claims arising under Hawai'i Revised Statutes ("HRS") Chapter 378 Part I. William D. Hoshijo, the Executive Director of the Hawai'i Civil Rights Commission ("Executive Director") and Complainant-Intervenor Kay Lorraine Bate ("Complainant") allege that Respondents Research Institute for Hawaii USA ("RIH") and Christopher Damon Haig ("Haig") subjected Complainant to hostile work environment harassment based on her religion (Jewish) and her sex (female). The Executive Director and Complainant also allege that Respondents

I hereby certify that this is a true and correct copy of the original on file at the HAWAII CIVIL RIGHTS COMMISSION.



CHIEF COUNSEL  
Livia Wang



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terminated Complainant because of her religion and in retaliation for complaining about the religious and sexual harassment.

The Executive Director and Complainant also contend that Respondent RIH is liable for the harassment and termination because it was Complainant's "employer" within the meaning of HRS § 378-1. Additionally, they contend that Haig is individually liable to Complainant because RIH was a shell corporation operating as Haig's alter-ego. Alternatively, the Executive Director and Complainant maintain that Haig is individually liable to Complainant because he aided and abetted RIH's discrimination against her in violation of HRS § 378-2(a)(3).<sup>1</sup>

Respondents RIH and Haig contend that there is no legally cognizable claim for religious harassment under HRS Chapter 378, and that in any event, Complainant was not subjected to religious or sexual harassment. Respondents also contend that Complainant was not terminated, but failed to re-apply for her position after RIH was reorganized. Respondents therefore maintain that the Executive Director and Complainant failed to

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<sup>1</sup> The Executive Director and Complainant originally alleged that Haig, as Complainant's supervisor, was individually liable as an "agent" and "employer" under HRS § 378-1. However, during the pendency of this matter the Hawai'i Supreme Court issued its decision in Lales v. Whole Sale Motors Co., 2014 WL 560829 at 10-17 (2014), holding that supervisors were not "employers" under HRS § 378-1 and therefore could not be individually liable for discrimination under HRS Chapter 378.



establish a prima facie case of termination based on religion or retaliation. Respondents further allege that Complainant was an independent contractor, not an "employee" covered by HRS Chapter 378, and contend that Complainant is estopped by her conduct from claiming that she was an "employee".

With respect to Haig's individual liability, he contends that RIH was not a shell corporation acting as his alter ego. He further maintains that neither the Executive Director nor Complainant made timely claims against him for aiding and abetting discrimination under § 378-2(a)(3).

The Hearings Examiner issued his Findings of Fact, Conclusions of Law and Recommended Order ("Proposed Decision") on March 10, 2014. The Hawai'i Civil Rights Commission ("Commission") hereby adopts and incorporates by reference the procedural history of this case as set forth in Appendix A of the Proposed Decision. The parties filed timely exceptions and statements in support of the Proposed Decision on March 27, 2014 and April 11, 2014, respectively. Complainant requested oral argument on the exceptions.

The Commission held oral argument on April 30, 2014. Present at the argument were Commission Chair Linda Hamilton Krieger and Commissioners Raymund Liongson, Kim Coco Iwamoto and

Wallace Fukunaga.<sup>2</sup> Enforcement Attorney April Wilson-South represented the Executive Director. Margery Bronster, Esq. represented Complainant, and Bruce Voss, Esq. represented Respondents RIH and Haig.

The Commissioners considered the parties' exceptions and statements in support, heard oral argument and considered the hearing record. Pursuant to HRS §§ 368-14, 368-17 and HAR § 12-46-56, the Commission finds and concludes that:

a) Complainant was an employee of RIH under HRS Chapter 378 and she is not estopped from so contending;

b) Haig subjected Complainant to harassment based on her religion (Jewish) and sex (female) in violation of HRS § 378-2 and HAR §§ 12-46-109(a) and 12-46-151;

c) RIH and Haig discharged Complainant from employment because of her religion in violation of HRS § 378-1(a)(1(A) and HAR § 12-46-151;

d) RIH and Haig also discharged Complainant in retaliation for complaining about the harassment in violation of HRS § 378-2(a)(2);

e) RIH is liable for Haig's harassment of Complainant because Haig was Complainant's supervisor under HAR §§ 12-46-109(b), and is liable for Complainant's termination and

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<sup>2</sup> Commissioner Artemio Baxa was not present at the argument but read the argument transcripts. See attached Declaration of Artemio C. Baxa.



retaliation under HRS § 378-2 and HAR § 12-46-151;

f) Haig is individually liable to Complainant for the harassment, termination and retaliation because RIH was a shell corporation operating as Haig's alter ego;

g) Haig is not individually liable to Complainant under HRS § 378-2(a)(3) for aiding and abetting discrimination because that claim was not raised before the contested case hearing in this matter; and

h) Complainant shall be awarded compensatory damages for back pay and emotional distress, punitive damages, attorneys fees and costs, and equitable relief pursuant to HRS § 368-17.

Accordingly, the Commission adopts in part, modifies in part, and reverses in part, the remainder of the Hearing's Examiner's proposed decision, as follows.

**I. FINDINGS OF FACT**<sup>3</sup>

1. Complainant Bate is a 67 year old Caucasian female, who as a child was raised Methodist, but converted to Judaism when she was 21 years old. Complainant has been an observant Jew since her conversion and, during all times relevant to this matter has been an active member of Sof Ma'arov, a Jewish synagogue located in Honolulu, Hawaii. (Transcript 9/23/13 Vol.

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<sup>3</sup> To the extent the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

II at 20, 54, 60)

2. In 1994, Complainant moved to Hawaii with her husband, Brad Bate. Prior to moving to Hawaii, Complainant worked for a short time as a singer and musical actress. Later, she and her husband started a production company, which made commercials. She was also involved with a number of non-profit associations. After moving to Hawaii, Complainant started her own business, "Organizational Headquarters," which provided executive director and other contract services for non-profit organizations. One of Complainant's clients was Hawaii Women Lawyers, and through this organization Complainant began to volunteer with the Hawaii Women's Legal Foundation's ("HWLFF") annual fundraiser, which usually consisted of a dinner with a number of satirical comedy skits as entertainment. (Tr. 9/23/13 Vol. II at 21-26; Tr. 9/24/13 at 26-36; Tr. 10/15/13 at 85-86; Ex. R-6)

3. In 2004, Complainant closed her business and applied for work with Snelling Staffing ("Snelling"), a firm that recruits, evaluates and places job seekers, and provides human resource ("HR") assistance and payroll services to companies and non-profits. (Tr. 9/23/13 Vol. II at 27-28; Ex. R-15)

4. In July 2004, Complainant sought and obtained employment with Snelling as a temporary employee. The general

manager of Snelling at that time was Kanani Iaea. Iaea placed Complainant at RIH, working part-time as a project producer. Complainant worked at RIH as a Snelling employee from July 2004 through March 2005. At the time she was hired and worked at RIH, Complainant had taken some college courses, but she did not have a college degree, and Haig was aware that Complainant did not have a college degree. (Tr. 9/23/13 Vol. II at 28-29; Tr. 10/22/13 at 16-18 57-59)

5. Respondent RIH is a historic research institute that focusses on the U.S. Constitution, the U.S. Founding Fathers, and the missionary history of Hawaii. RIH was initially organized as a 501(c)(3) non-profit in 2000, but in 2006, it became a private foundation. The RIH staff mainly attended conferences, lectures and historical commemoration events, helped to co-sponsor some of these events, and did some historical research. All RIH staff, including Complainant, were designated and paid as independent contractors. However, from 2004 onward, Nancy Evans Tudor ("Evans Tudor"), the RIH accountant, advised Haig to convert the staff into employees to comply with federal and state employment and tax laws because the staff worked full time at RIH. (Tr. 10/16/13 at 112-118; Tr. 10/21/13 at 12-14; Exs. JC-9, JC-16, JC-21)

6. RIH had offices in the Ward area of Honolulu, and the staff worked both at the RIH offices and from their homes. The

RIH office and staff home computers were all connected to the same server, and the entire staff had access to the entire contents of the server. During Complainant's tenure, RIH nominally had a board of directors with various members. However, during that period, the board did not meet and never discussed or voted on hiring or firing an executive director, adopting a budget, adopting personnel policies or making capital improvements. Haig appointed all the RIH Board members, but the RIH Domestic Non-Profit Corporation Annual Reports for 2004, 2005, and 2006 were not filed with the DCCA until July 2007, and some RIH board members listed on those reports did not even know they were board members. (Tr. 9/23/13 Vol. II at 38-39, 72-74; Tr. 9/24/13 at 228-229; Tr. 10/16/13 at 14-16, 30-32, 98-101, 121; Tr. 10/17/13 at 198; Tr. 12/3/13 at 41-46, 49-50; Ex. JC-6)

7. Respondent Christopher Damon Haig is a Damon Estate heir whose personal net worth exceeds \$50 million. He is the founder of RIH and during Complainant's tenure, was President of RIH and provided nearly 100% of its funding and has personally paid all of RIH's legal bills. Whenever RIH was low on funds, Haig would deposit money from his personal account into the RIH account. During Complainant's tenure, Haig supervised Complainant and had the final say in all hiring, job assignments and all project work at RIH. Haig would also hire new RIH staff without consulting Complainant. (Consolidated Order dated

8/15/13; Tr. 9/23/13 Vol. I at 30-31; Tr. 9/23/13 Vol. II at 40, 102-103; Tr. 10/16/13 at 94-96, 110; Tr. 10/17/13 at 8-9, 13-14, 43-44; Tr. 10/21/13 at 97, 279-280; Exs. JC-9 to JC-14).

8. Haig is very patriotic and has strong concerns for the safety of the United States, its government, citizens, corporations and educational institutions from hostile foreign powers and unpatriotic U.S. citizens. Haig also holds a number of eccentric beliefs. For instance, he is fixated with being compliant with OSHA and other federal safety laws. He is frightened by Halloween and feels it is an occult activity and "defamatory." For the past 20 years, he has promoted an alternative to Halloween called "Great Men and Great Women Day" where people would instead dress as famous, dignified, American historical figures. Haig also feels that certain people can steal other's "professional intelligence" by shuffling their feet, or can "suck intelligence" from others by using a vacuum cleaner. Haig believes he can see columns of light emanating from people and/or the places where they are located when such people "project their bad intent." He also believes that subsequent to a Honolulu Advertiser story about the Damon Estate, he has been stalked or "hijacked" for his wealth. Haig has sent various reports to the FBI about Complainant and others he feels are stealing his and other's "professional intelligence." Haig also believes that pursuant to his reports,

he has been protected by the U.S. Secret Service Agency and other federal agencies from different "risks" for "many years." However, RIH and Haig assert that Haig is competent and has no medical or mental conditions that would be a defense to any of the Executive Director's or Complainant's claims. (Tr. 10/16/13 at 37, 226-227; Tr. 10/17/13 at 21-22, 49, 82-87, 170-179; Tr. 10/21/13 at 8-11, 34-35, 73, 107-121, 189, 197-198)

9. In October 2004, Complainant invited Haig to an HWLF fundraiser. The event was a roast and apparently involved some people cross-dressing in costumes. On October 18, 2004, Haig wrote an email about the HWLF fundraiser to his legal assistant, Brynn Rovito, stating he was "pleased with some of it" but felt Complainant was also "defaming" and "denigrating" "responsible professionals" and accused Complainant of "taking the professional experience from those around her, (with spiritual warfare foot functions of raking Christian [sic] under her feet, as a powerful subversive Hebrew intent upon subverting the professional policies of these well respected public institutions" and stated, "I am suspicious on that basis of her taking on the executive directorship of RIH USA!" (Ex. JC-18)

10. Nevertheless, on March 14, 2005 Haig hired Complainant to be the RIH Executive Director. From March 14-28, 2005, Haig and Complainant drafted several versions of a memorandum of intent ("MOI"), which was signed on March 28,

2005. The MOI identified Complainant as an "independent contractor" and contained a "Detail of Responsibilities" for Complainant as the RIH Executive Director. Those duties included: providing management support to RIH; serving as the RIH compliance officer to insure that RIH was operating within all applicable laws and regulations; preparing the annual budget; overseeing the RIH website and other RIH publications and productions; coordinating RIH educational programs; handling all RIH staffing matters; serving as development and fundraising officer; and being the official spokesperson for RIH. The MOI, however, had an expiration date of June 28, 2005 and was not intended to be an extended contract. (Tr. 9/24/13 at 36-38; Tr. 10/22/13 at 18-19; Exs. JC-74, JC-75, R-28)

11. Throughout her tenure at RIH, Complainant attempted to finalize a contract to replace the expired MOI. She prepared, in conjunction with RIH attorney John Carroll ("Carroll"), numerous drafts of a contract that would govern the terms of her employment at RIH. However, Haig never took action on any of these drafts, and no contract was ever finalized. (Tr. 9/23/13 Vol. II at 44-46, 113-114; Tr. 9/24/13 at 44-48; Tr. 10/21/13 at 25)

12. Complainant worked directly for RIH as its Executive Director from March 14, 2004 through January 3, 2007 and submitted weekly invoices for \$1,500 a week (\$78,000/year).

Like other RIH staff invoices, all of Complainant's invoices indicated that she was performing services as an independent contractor. (Tr. 9/24/13 at 71-72; Ex. R-29)

13. During her tenure at RIH, Complainant made good faith efforts to perform all the RIH executive director duties described in the MOI. She developed a list of goals for RIH as well as a list of prospective board members. She presented the list of prospective board members to Carroll and Haig, contacted people who were approved by Carroll and Haig, and met with board prospects. She organized a Liberty Award Luncheon fundraiser and raised about \$1,200 for RIH. She also met with Carroll and drafted employment contracts that would have reclassified the RIH staff as employees, and worked with Carroll and RIH consultant Frances Mossman to draft an employee handbook. However, Haig did not approve any of these. (Tr. 9/23/13 Vol. II at 40-50, 108-109; Tr. 9/24/13 at 38, 60-62; Tr. 10/15/13 at 105-107, 112-113; Ex. R-13)

14. During Complainant's initial employment through April 2005, Haig and Complainant had a cordial personal and working relationship. They attended meetings together and Haig took Complainant to various events at Kamehameha Schools, the Mission House Museum, the Pacific Club and the Hawaii Society of Corporate Planners. Haig also paid for Complainant to attend several conferences and trainings and gave Complainant a



Christmas bonus in December 2004. (Tr. 9/23/13 Vol. II at 31-32, 50-51; Tr. 10/21/13 at 51)

15. Sometime in April 2005, during a Monday morning discussion with Haig about their weekend activities, Haig asked Complainant whether she had been to church that weekend. When Complainant replied that she attended religious services every weekend, Haig asked if she sang in the choir. Complainant responded that her congregation did not have a choir. Haig asked, "What kind of congregation wouldn't have a choir?" Complainant then told Haig that she attended a Jewish synagogue and was a person of the Jewish faith. Haig flinched and left the room. Haig felt that Complainant was an "unsafe" and unpatriotic Jew, because she didn't refer to herself first as an American citizen and secondly as Jewish. (Tr. 9/23/13 Vol. II at 51-52; Tr. 10/21/13 at 127, 143-145)

16. After this Monday morning conversation, Haig began to treat Complainant less favorably. He avoided her at the office, stopped inviting her to lunch and became critical of her work and "safety." During a work related conversation in May or June 2005 Haig told Complainant "Stop that with your feet!" When Complainant asked Haig what he was talking about, Haig replied, "Stop what you're doing with your feet. You take our good Christian words out of the air, and you pull them to the ground, and you trample on them with your big Hebrew feet."

When Complainant objected by saying "We do not," Haig said, "Yes you do. They teach you to do that in synagogue." Haig then became angry and left the room. A short time later Haig told Complainant that "Jew" is a "bad term" and that he wanted her to use the word "Hebrew" instead. (Tr. 9/23/13 Vol. II at 49, 51-54, 63; Tr. 9/24/13 at 90, 92)

17. Around this time Heidi Lenz, the RIH Publications and Business Manager, moved out of the office she previously shared with Complainant and moved to an office closer to Haig. Lenz began treating Complainant less favorably, made anti-Jewish comments about Complainant to other RIH staff, and did not express any objections to Haig's anti-Jewish comments about Complainant. (Tr. 9/23/13 Vol. II at 29-30; Tr. 10/16/13 at 173-174, 186-186, 212-213)

18. On July 8, 2005 Haig sent Carroll a draft letter addressed to Complainant accusing her of not performing her fundraising and board recruiting duties. The draft letter also included the statement, "Instead, I have been diminished and shuffled down, from a rather malicious, defensive foot shuffling, taking my professional expertise which I have spent years building up! What are the specific reassurances that you will not be shuffling down and diminishing other academic professionals intelligence while you work in your office?"

(Ex. JC-20)

19. In October 2005 Complainant again volunteered with the annual HWLF fundraiser and invited Haig to the event. That year the theme was Halloween and the skits involved people dressed in Halloween costumes. Complainant was not involved in choosing the theme. During the fundraiser, Haig was "frightened" and "shocked" to see attorneys and judges in "demeaning" costumes and felt that Complainant dressed and acted as a "queen" holding herself out as superior to and in disrespect of everyone else, projecting "Heil Israel" and "take all the professional intelligence from the judiciary and pitch them over to Israel." On October 23, 2005 Haig wrote an email to Lenz about the event, stating that the fundraiser cast legal professionals in a "false light" and that it reflected "[s]trategic disruptive foreign powers with malicious intent to Dismantle normative reasonable respect for US legal compliant policies of law profession." (Tr. 9/24/13 at 77-79, Tr. 10/15/13 at 86; Tr. 10/21/13 at 32-36, 83, 171-180; Ex. R-37)

20. After the October 22, 2005 HWLF event, Haig became more hostile towards Complainant, and his anti-Jewish expressions became more frequent and extreme. On October 29, 2005 Haig told Complainant to stop shuffling her feet to "dumb" him down. Haig accused Complainant of stomping her feet at Kerry Steele, an RIH staff member who used to work for the State Department, in an effort to diminish Steele's "professional

intelligence." On November 11, 2005, after attending an art lecture, Haig wrote an email to Lenz regarding a Professor Littman, (who Haig knew to be Jewish) "who like Kay [Complainant], was taking all the Christian [sic] intelligence, and taking all critics by standing on them." (Tr. 10/21/13 at 36-41; Ex. JC-22a)

21. After the October 2005 HWLF fundraiser, Haig also considered replacing Complainant as RIH Executive Director because of her "unsafe" "Hebrew" tendencies. Haig hired Andresen Blom, a political consultant Haig met in Washington D.C., and brought Blom out to Hawaii to evaluate RIH and its staff. On January 16, 2006 Lenz, per Haig's instructions, contacted Snelling, asking if Snelling could refer any "executive director type" employees with Masters or PhD degrees. In April 2006 Haig, Blom and Lenz began drafting a new RIH executive director position description requiring a college degree. (Tr. 12/3/13 at 24-25; Exs. JC-33, R-52)

22. On March 20, 2006, Haig wrote a draft document and emailed it to Pam Green, an RIH editor, stating that Complainant "defied" her duties to raise funds for RIH and recruit board members, and was unfairly taking advantage of RIH. In addition, Haig wrote:

During those 10 months, KBL [Complainant] appeared to have ulterior foreign powered Israeli Zionist ("Heil [sic] Israel neo-nazism [sic]) motives to maliciously

subliminally diminish, disrupt, and target the wealthy Christian foundational trusts of many leading billionaires, who are US Constitutionally protected in the United States.

From many months of professional evaluations, KBL used advanced spiritual warfare foot shuffles in the following manner.

KBL diminished these wealthy foundations on her back left foot and then KBL used Take all their intelligence to her Hebrew People, associated with Israel. Sometimes she would project "Heil Israel in the spirit from her home office at Marco Polo.

In the review of many wealthy foundations, KBL persistently used that review process with ulterior motives to maliciously diminish, subvert and disrupt the effectiveness of Christian heritage of the leading wealthy foundations prominent on the web.

. . . .

KBL also was active in a film class during this time, and spent much of her time reviewing the history of US film in Hawaii. She was active in diminishing and taking the experiential intelligence from that film heritage using similar powers of Take all professional intelligence to our Hebrew people, (from Israel). She appears to sustain that malicious false entrapment and forced extractive larceny of the many different history of US films in Hawaii.

Despite persistent requests by RIHI.USA to put her lists of the film industry history on the website, she has not yet complied with that simple request. That default suggests the conflicts of interests of ulterior motives to use our funding her, so that she can pursue different agendas, in association with foreign powers.

(Ex. JC-30)

23. In April 2006, Haig wrote two emails to Jeffrey Mead, an RIH researcher, expressing anti-Jewish sentiments generally and towards Complainant specifically. Mead, who was concerned about Complainant, forwarded these emails to her.

On or before April 7, 2006 Haig wrote:

One could imagine a 'Noah's Ark' award for Passover to suggest the forceful disruptive power of the old Testamentary precedents influencing the success of the state!

Give credit to Moses for the flooding! Remind people of Moses parting the waters and letting the flooding descend upon the following non-Hebrews.

One could, thus, suggest the benefits of reading the Old Testament stories of Noah and the Ark, with its profound disruptive effects upon the flooding of the environment.

On April 8, 2006, Haig wrote an email to Mead and Lenz, stating:

With respect for everyone personally, it is still helpful to identify risk from foreign colonial religious powered 'con-artists' who are undermining our US heritage in Hawaii.

There appears to be foreign powered, subliminally tyrannical monopolizing powers of KBL which have been disrupting many of the US civil educational traditions for many years, with her bad faith subversive interpretations.

Previous reports have documented evidence of pilferage and invasion of other secure corporate offices, and also con artist deceptions to conceal her disruptive policies.

In KBL's use of her powers she uses stirring above herself "infinite superior in everything" . . .

The foreign colonial aggressive Hebrew powers have invaded, maliciously targeted and disrupted those powers of mother superior, also for many decades!

Then KBL uses, stirring above herself, Make commercial producer, to take and make all experiences into herself "infinite superior in everything"

Then KBL uses a malicious foot stomp down on everything else", not Hebrew.

From an evaluation there is a Hebrew SS policies which have been active for many years as foreign colonial aggressive subliminally malicious powers disrupting and targeting US citizens.

(Tr. 9/23/13 Vol. II at 86-87; Tr. 10/16/13 at 195; Exs. JC-34, JC-45)

24. After an RIH seminar presentation by Kathleen Pavelko at the Mission Houses Museum, Haig, Complainant, Lenz and Pavelko went to lunch at the Pacific Club. After the lunch, Haig took Complainant aside and told her to "be careful and stop doing that with your big Hebrew feet under the table" because it "crushes" Pavelko's "good Christian words." When Complainant began to tear up and told Haig to stop making such statements because they were hurtful, Haig responded by saying, "Oh, don't feel bad, it's genetic." (Tr. 10/23/13 at 89-91)

25. In April 2006, Complainant retained Brian Ross, an advertising design consultant, to review an ad that Haig wanted to put in a military publication. Ross was a freelance ad designer who formerly worked for Starr Seigle Communications. Haig had hired Starr Seigle to design ads in the past, and Starr Seigle recommended Ross for this particular job. Ross felt that the draft ad had too many words in it and looked crowded. Haig believed that Complainant had recruited Ross from her synagogue and that they were both colluding to destroy the ad. However, Ross did not attend Complainant's synagogue, and Complainant did

not know Ross prior to his work on the ad.

On May 9, 2006, Haig wrote an email to Mead stating in part:

He [Ross] appeared to have severe conflicts of interests in his claims that he was originally from Canada, with a prejudicial bias against the policies of the Research Institute for Hawaii.USA .

. . . .

What is the extent of Kay's collusion in these policies is another question. . .

This Research Institute for Hawaii.USA is required to be run by someone with academic credentials, not someone who is only just starting to take courses at college for the first time in 20 years . . . while Kay has been since diminishing my US professional intelligence and those around her to sustain her bad faith fraudulent policies, as evidenced by several of her fund raisers, which maliciously inflicted emotional and psychological damages upon unsuspecting US professionals . . . Putting UH professors in drag, was an intentionally disruptive, malicious false entrapment policy which she has continued for several years

. . . .

(Tr. 9/23/13 Vol. II at 117-121; Tr. 10/21/13 at 201-202; Ex. JC-38).

26. Mead was uncomfortable with Haig's anti-Jewish comments and on a few occasions told Haig that he felt the comments were inappropriate and hurtful to Complainant. In response, Haig was sometimes apologetic about his conduct, but at other times laughed and seemed to enjoy hearing about the pain his comments caused Complainant. Mead became concerned about Haig's May 9, 2006 accusations against Complainant and



forwarded this email to Carroll and Mossman and discussed his concerns with them. In forwarding the email, Mead stated, "To say the least I am bewildered . . . and appalled. Please be there for Kay in case this goes any further." (Tr. 10/16/13 at 160-161, 167-179; 182-185, 194, 226; Ex. JC-38)

27. After the incident with Brian Ross, in May 2006 Haig hired Kathleen Larson to do fundraising and publicity work for RIH, removing these duties from Complainant. Haig had met Larson in the check-out line at an office supply store, and hired her on the spot without consulting Complainant. Larson and Complainant shared an office. Larson created an ad that contained a picture of an American eagle and hung it on the office wall. One day when Haig was in the office, he remarked to Complainant, "I know you don't like that ad . . . because you Hebrews don't like eagles." Complainant asked why not, and Haig said "Because the beak looks just like a Jewish nose." Complainant was insulted, turned around and walked out of the office. (Tr. 9/23/13 Vol. II at 116-117; Tr. 9/24/13 at 40-41, 186; Tr. 10/17/13 at 8-9)

28. Haig also began to treat Complainant less favorably than other RIH staff because she was Jewish. In May 2006, Haig invited the entire RIH staff to the Honolulu Symphony Ball, but excluded Complainant. Complainant was upset about being excluded and emailed and talked to Haig about wanting to

attend. Haig told Complainant that he didn't invite her because he didn't want to interfere with her Sabbath. However, Haig didn't want Complainant to attend because she was Jewish, and he felt that she was "stalking" Kerry Steele and using "foot shuffling" to "dumb down" and "detrimentally diminish" Steele. Because the ball was held after sundown on a Saturday and not during the Sabbath, Complainant attended the ball as a guest of another group. During the ball, Haig instructed Mead not to dance with Complainant because of Complainant's "Hebrew tendencies." Complainant complained about her exclusion to Ted Riecker, an RIH attorney and RIH board member.

Haig also loaned his personal car to Mead for Mead's use, but instructed Mead not to let Complainant ride in the car because she was Jewish. Mead told Complainant about the car restriction, which angered and upset her. (Tr. 9/23/13 Vol. II at 84-85, 89-91, 105-106; Tr. 9/24/13 at 162-163; Tr. 10/16/13 at 153-154, 159, 162-166, 174-178; Tr. 10/21/13 at 53-54; Ex. JC-39)

29. Sometime in May or June 2006 Complainant was in Lenz's office with Michelle Bowerman, a new RIH staff person, looking for some forms. Complainant and Bowerman saw and read Haig's March 20, 2006 draft document to Pam Green (see FOF #22), which was on Lenz's desk. Complainant became embarrassed, upset and concerned about the accusations against her in Haig's March

20, 2006 document. The next day Complainant complained to Lenz about it. Lenz, who by that time became an RIH board member responded, "That's just Christopher being Christopher" and did nothing about the matter. (Tr. 9/23/13 Vol. II at 64-67, 69-70, 81-82; Tr. 9/24/13 at 97-102; Tr. 10/17/13 at 53-56, Ex. JC-30)

30. Haig also emailed and made anti-Jewish statements critical of Complainant to Larson and Bowerman, reiterating the theme that, because of her Jewish religion, Complainant was "unsafe" and was using a variety of tactics to "extract" the intelligence of Christian professionals in order to turn it over to her "Hebrew people." Haig also expressed to Mead his intent to fire Complainant because of her "Heil Israel" policies. (Tr. 10/16/13 at 217; Tr. 10/17/13 at 15-17, 19-22, 49-51)

31. Haig continued to write Mead emails critical of Complainant, which Mead continued to forward to her.

On August 8, 2006 Haig wrote an email to Mead stating:

KBL usually takes all my US professional intelligent experience over to her Hebrew people, to sustain her controlling advantage, and diminish any questioning of her. I consider that her covert intent is to take unfair advantage of the Christian intelligent professionals around her, with her tactics of forcing extractive larceny. That is one step above, her previous petty theft of experiential intelligence from those in our responsible work professionally around here.

On August 31, Haig wrote two emails to Mead. The first one accused Complainant was using "popular Heil Israel functions of stirring unsafe accidents until they [two blond friends and

Lenz] are brought into submission to their foreign colonial religious powers!"; of Complainant running "over on her tires many different people while she is forcibly extracting our professional vigilant intelligence"; for "using foot functions to take the professional intelligence from Kathleen [Pavelko] who just made a major professional presentation in her own conference on US policies;" for colluding with the Dean of the UH law school (who is also Jewish) to plagiarize one of Haig's past writings and not allow Haig to speak at a constitutional law forum; and of Complainant "defeating many different people around her, while she is forcefully extracting and taking over their professional Christian intelligence."

Haig's second email to Mead again accused Complainant of "shuffling foot functions of 'taking to her Hebrew people' of foreign corporate Israeli powers is act in foreign powered forcing extractive larceny against the US Constitutionally protected US professional intelligent experience of other members of the Research team." (Exs. JC-44, JC-47, JC-48)

32. After a conversation with Complainant about her son's death many years ago in a motorcycle accident, Haig felt that Complainant blamed a "Christian woman driver" for the accident and that Complainant had a "malicious prejudice" against such Christian women drivers and was "stirring up risks" against them. In his first August 31, 2006 email to Mead, Haig

also blamed Complainant for the death of her son because she somehow failed to protect him from his motorcycle accident. (Tr. 10/21/13 at 57-63; Ex. JC-47)

33. Complainant became upset upon reading Haig's anti-Jewish statements and had an emotional break down after reading Haig's email blaming her for the death of her son due to her "unsafe" "Heil Israel functions." She informed her husband about that email and cried about it all that night. She was distraught, hurt and crying when she showed that email to Bowerman. (Tr. 9/23/13 Vol. II at 92-96; Tr. 9/24/13 at 222-223; Tr. 10/16/13 at 52-53; Tr. 10/17/13 at 56-58; Ex. JC-47)

34. Subsequently, Haig wrote emails directly to Complainant asking her to stop stealing his and other people's intelligence. On October 12, 2006, Haig wrote to Complainant:

. . . I am concerned that Kay Lorraine, while acting as executive director, has been diminishing many US professionals in Hawaii under the tires of her Lincoln Car, and with foreign colonial powers.

Kay please cease and desist from your persistent evidential patterns malicious diminishment of professionals, in forced extractive larceny of my professional intelligence.

On November 20, 2006 Haig wrote to Complainant:

Kay, you and your husband Brad appear to be persistently and forcibly extracting with malicious forced larceny of my professional experience in GIS.

Please cease and desist from the persistent patterns of your unfair, unsafe, covert forced extractive taking of my US professional experience and expertise in GIS research.

Complainant became especially upset over the accusations against her husband and forwarded the emails to Carroll and Mossman. Mossman by then had also become an RIH board member. In her forwarding email, Complainant stated, "Christopher's charges against my husband are getting more and more persistent and serious. Of what is my husband guilty, other than being married to a Jew? Can you shed any light on this for me? I am becoming used to be slandered and libeled by Christopher on a regular basis, but Brad is not and it is very upsetting." Carroll responded to Complainant's email by merely writing back, "To All!!!! ood [sic] Grief!!!!" (Tr. 9/23/13 Vol. II at 78-79; 122-123; Exs. JC-50a, JC-56a, JC-57)

35. On November 23, 2006 Haig wrote an email to Michele Van Hessen, an RIH consultant, accusing Complainant of inflicting "emotional distress" on "other races" and following a "Kibbutz policy" of stealing paper from a neighboring company's office. The email states:

. . . KBL tended to maliciously diminish professional American Hawaiian intelligence under the wheels of the brown Lincoln Car. There appear to be rather racist tendencies of Kay's malicious diminishment of other races who are responsible professional citizens of the USA, and have duties in the 50<sup>th</sup> State of the USA!

. . . .

Kay claimed that she had instituted policies of sharing consistent with a Kibbutz policies of the common room at some distance from the office, which she walked into, taken, and then concealed items in her blouse as she walked

quickly away . . .

Complainant had permission from the neighboring company to use their paper. Evans Tudor forwarded this email to Complainant. (Tr. 9/24/13 at 240-242; Tr. 10/21/13 at 77-80, 145-149; Tr. 12/3/13 at 207-208; Ex. JC-60a)

36. In December 2006 Haig, Blom, Lenz, Riecker and Iaea held a series of meetings to discuss a reorganization of RIH. Complainant was not notified of or included in these meetings. Lenz suggested that Snelling take over all the RIH HR and payroll functions so that RIH would be compliant with federal and state labor and tax laws. However, Lenz also suggested that all the current RIH staff be terminated and made to re-apply with Snelling for continued work with RIH. Haig approved this re-organization plan and also decided to use the reorganization to terminate Complainant, as well as the RIH staff he felt were part of Complainant's "collusional group" - Mead, Larson and Bowerman. RIH and Snelling then entered into a partnership agreement in which Snelling assumed responsibility for all payroll matters, would review and re-describe all the RIH positions, and would screen and evaluate all the people applying for the new positions. The RIH Board was not informed, and did not meet to discuss or vote on the reorganization or partnership agreement with Snelling. (Tr. 10/16/13 at 139; Tr. 12/3/13 at 84, Tr. 10/21/13 at 90-92, 197-200; Tr. 10/22/13 at

20-24; Exs. R-15, R-117)

37. On December 18, 2006 Iaea sent emails to Complainant, Lenz, Mead, Bowerman and Larson, instructing them to attend a mandatory meeting on December 21, 2006 at the Snelling offices. On December 21, 2006, Complainant, Mead, Bowerman and Lenz attended the meeting. At the meeting, Iaea showed the attendees the RIH-Snelling partnership agreement and explained that RIH was being "reorganized," whereby Snelling would handle all the RIH personnel matters, and future RIH staff would become Snelling employees placed in positions that "best maximized their skill set". Complainant, Mead and Bowerman were caught by surprise and asked if the reorganization would result in their termination from RIH. Iaea told Complainant, Mead and Bowerman that that no personnel changes would be made for the next one or two months, and that they could continue to work for RIH by re-applying through Snelling. Complainant and Mead then had several questions about the reorganized positions and salaries that Iaea could not answer.

Iaea then gave the staff Snelling application forms. Complainant, Mead and Bowerman declined to sign the Snelling application forms at that meeting and asked if they could take the forms to their personal attorneys for review. However, Iaea would not allow anyone to take the forms out of the Snelling offices. Lenz had already signed the Snelling application on



December 18, 2006.

At the end of the meeting, Iaea promised Bowerman, Larson, Mead, and Complainant that she would hold a follow up meeting to answer their questions, and would allow their personal attorneys to look at the forms at that meeting. However, Iaea never held a follow up meeting with the RIH staff, and except for Lenz, none of them were re-hired. (Tr. 9/23/13 Vol. II at 134-138, 140-142; Tr. 10/16/13 at 196-200, 229-230; Tr. 10/17/13 at 61-67; Tr. 10/22/13 at 27-29, 31-32, 105-106)

38. That evening, Haig wrote and emailed a report titled "Recent incident at Ward Center, Honolulu, Hawaii, USA," which he blind copied to Complainant. In this report, Haig recounted seeing a blond man who had been mugged and beaten near Complainant's Ward office and felt the man had been victimized by a "powerful covert foreign Israeli colonizing malicious function in the area"; that the whole area around Ward Warehouse and Ward Center had been targeted by Complainant, her husband and "their Pro-Israeli family"; that "Israeli powers" had maliciously set up "unsafe conditions" that led to the deaths of JFK and JFK Jr.; that Complainant and her husband had used "Heil Israel" powers to extract Haig's professional experiences; and that Complainant had hired "foreign bad faith ad experts" (i.e., Brian Ross) from her local synagogue to "maliciously disrupt the confidence" of the RIH staff.

Haig also stated that Complainant and her husband should have been fired for using such "unsafe policies and unethical unsafe practices."

In addition, Haig accused Complainant of not wearing a bra to seduce him so that he would overlook her "performance deficiencies."

Complainant read this email and became very upset about Haig's anti-Jewish statements and accusations, and his statement that she should be fired. (Tr. 9/23/13 Vol. II at 126-129; Tr. 9/24/13 at 118-121; Tr. 10/21/13 at 196, 233-253; Ex. JC-76)

39. Complainant also became upset about Haig's statement that she tried to seduce him by not wearing a bra. Complainant has not worn a bra since she was a teenager, but always wore a jacket when she was working at the RIH offices. During summer 2004, when Complainant was sharing an office with Lenz, Complainant took off her jacket in their office for a short period when the air conditioning was not working. Prior to Haig's December 21, 2006 report, Complainant told Mead that she felt that Haig had been staring at her breasts. Mead informed Complainant that Lenz had been "going around the office" telling the RIH staff that Complainant did not wear a bra. Complainant felt that Haig was looking at her breasts to see if she was wearing a bra. (Tr. 9/23/13 Vol. II at 59, 79-80, 125-127)

40. On December 30, 2006 Iaea emailed letters to Complainant, Mead, Bowerman and Larson, informing them that their employment with RIH would cease effective January 3, 2007 and that the RIH offices would be closed during the reorganization and review process. These letters had been reviewed by Haig, Riecker, and Blom. The letters instructed the RIH staff to turn in their office keys, security cards and other RIH property to Iaea by January 5, 2007. The letters also stated, "If you would like to discuss employment policies and/or opportunities with Snelling for the Research Institute for Hawaii.USA or any other organization or corporation, I would be more than happy to assist you at the Snelling office." (Tr. 9/23/13 Vol. II at 142-143; Tr. 10/16/13 at 200-206; Tr. 12/3/13 at 94; Exs. JC-77, R-126)

41. Complainant, Bowerman, Mead and Larson were shocked and upset after receiving the December 30, 2006 termination letters, as Iaea had previously assured them that no personnel changes would be made for at least a month. All of them understood this letter to mean that they were being fired from RIH. Complainant especially felt badly for Mead, Larson and Bowerman, because they had worked together on several projects, became friends, and she considered them to be her "team." (Tr. 9/23/13 Vol. II at 143, 154; Tr. 10/16/13 at 204-205; Tr. 10/17/13 at 62-67)

42. Because Complainant believed that she would lose her job, she began to search the RIH server for other emails written by Haig and found two other emails Haig wrote to Lenz. In a December 26, 2006 email Haig commented that Complainant falsely assumed that his cell phone ring tone was "Nazi music" she could "forcibly extract for her use;" that Complainant had "continued to rob me of my professional experience, and endanger my and other professionals lives by her unsafe powers;" and asked "what are risks to US Federal agencies from Kay's foreign corporate Heil Israel, colonizing, with powerful extraction of US intelligence from many professional US leaders experience?"

In a December 31, 2006 email entitled "Draft Review of Management Risks by Interim Executive Director," Haig stated that Complainant "used sexual harassing policies of wearing braless nylon plouses [sic] whenever she wanted an invoice signed once a month. She would use very suggestive moves in her visits to falsely entice the President into noticing herself." (Tr. 9/24/13 at 121-122; Exs. JC-62a, JC-64, JC-71)

43. Complainant continued to be upset about Haig's religious and sexual accusations, especially since Haig had emailed these accusations to other RIH staff. Other RIH staff and contractors observed Complainant's pain and distress. Mead saw Complainant cry after reading some of Haig's emails. Larson saw Complainant break out in hives. Bowerman saw Complainant

cry and become "very distraught and hurt" after receiving Haig's email accusing Complainant of being responsible for her son's death. Joseph Torres, an RIH computer contractor, saw Complainant become angry and upset about Haig's anti-Jewish comments. In addition, Complainant lost sleep, suffered skin lesions on her arms, torso and legs, and stomach pains. After she received the separation letter she became depressed and withdrawn. However, despite her distress, Complainant sought to keep her job at RIH because she was the main financial support for her semi-retired husband as well as her widowed mother, who at that time was living with Complainant and was terminally ill with cancer. (Tr. 9/23/13 Vol. II at 71, 75, 122; Tr. 9/24/13 at 7-8, 13-15, 122-123, 199-200, 213, 222; Tr. 10/15/13 at 69-73; Tr. 10/16/13 at 17-20, 50-52, 171, 250-251; Tr. 10/17/13 at 18, 57-58)

44. On January 2, 2007 Complainant met with Iaea at the RIH offices to discuss the December 30, 2006 separation letter. Complainant stated that she was surprised and upset that she had not been informed of Haig's decision to retain Snelling to take over the RIH HR functions, since she had suggested this to Haig a few months earlier. Complainant also complained to Iaea about Haig's anti-Semitism and sexism. Iaea wrote notes from this meeting and forwarded those notes to Riecker, commenting, "my opinion is she [Complainant] is just

trying to cover her bases as far as fulfilling her responsibilities of her position in case this may be the reason she is being terminated." A few days later, Complainant met Iaea again to turn in her keys and observed that the staff's name plates had been taken off their office doors and all the locks had been changed. (Tr. 9/23/13 Vol. III at 143-147; Ex. R-211 at 1004160)

45. On January 3, 2007 Iaea sent emails to the RIH staff, asking them to send status reports on their projects and informing them that all RIH work and projects would cease. Iaea also instructed the staff not to attend any events, functions or conferences, or make any representations on behalf of RIH. (Ex. JC-65)

46. In a last attempt to save her job and those of Mead, Larson and Bowerman, Complainant sent Iaea a reply email which contained positive statements about Haig and the staff's concerns about their separation. Complainant states:

It will help you a lot if you understand that Christopher Damon Haig has, throughout the years, created a "corporate culture" within Research Institute for Hawaii.USA that values teamwork, respect for each other, and a strong encouragement for further education, professional development and networking with other organizations that carry similar values.

. . .

Frankly, the actions of the past week also do not sound like the sort of thing that Mr. Haig would usually condone. My experience with Mr. Haig is that he likes to move slowly and thoughtfully, involving many points of view. . .

(Tr. 9/23/13 Vol. II at 147-148; Ex. JC-69)

47. During the first week of January 2007, Haig offered Blom the position of RIH President, and Blom accepted. As RIH President, Blom oversaw the work of RIH. During his tenure with RIH, Blom worked half time as RIH President, and continued his half time work as a political consultant in Washington D.C. Although Blom attended college, he did not have any college degrees. Blom is Catholic, was paid directly by RIH, and did not apply for employment through Snelling.

Lenz, who is Christian, was promoted to be Administrative Director and also directed the work of RIH. On December 31, 2006 Lenz drafted an "Executive Report" outlining the re-organization process for RIH and status of all RIH work projects. Lenz also received a substantial salary raise from \$70,000 per year to \$226,854.28 that year. (Tr. 12/3/13 at 22, 35, 57-58, 99-100; Exs. R-126, R-131, R-136, R-139 to R-145)

48. On January 15, 2007 Iaea sent emails to Complainant, Mead, Bowerman and Larson reminding them to submit their work status reports. Iaea also stated, "During this reorganization period . . . not only are projects being reviewed but staffing and an array of positions are also being considered that you may perhaps be interested in and a potential candidate for." Subsequently, Complainant called Iaea and asked about

re-employment in her RIH executive director position. Iaea informed Complainant that Blom had already been hired to perform the executive director functions at RIH. Based on this information, Complainant believed that her executive director position was already filled by Blom and did not apply for re-employment with Snelling. (Tr. 9/23/13 Vol. II at 149-150; Ex. R-137)

49. From January 3, 2007 to July 2007, Complainant was unemployed. She applied for and received unemployment benefits, which RIH initially contested. During her unemployment hearing, Complainant was found to be an employee of RIH. Complainant also filed a determination of employee status with the IRS and obtained a decision that she had been an employee of RIH (Tr. 9/23/13 Vol. II at 150, 157-159; Ex. JC-146)

50. From mid-February to July 2007, Complainant applied for executive director positions with various non-profit organizations. In July 2007, she was hired as Executive Director of the Hawaii Women's Business Center ("HWBC") at a salary of \$62,000/year plus benefits, which in the aggregate was at least equal to her salary at RIH. However, the HWBC had financial difficulties, and during the course of her two year employment at HWBC, Complainant was paid \$104,705. She later sued HWBC for back wages and obtained a settlement for an



additional \$20,000. (Tr. 9/24/13 at 6, 8-11; Tr. 10/15/13 at 40-43; Tr. 10/22/2013 at 196-199)

51. After losing her job at HWBC in July 2009, Complainant had a difficult time finding an executive director position because of the recession and because she lacked a college degree. Complainant became a full time student and has not worked since July 2009. She expects to obtain her B.A. degree later this year. (Tr. 9/24/13 at 11-13; Tr. 10/15/13 at 45-47)

52. From January 2007 to December 2012, RIH had between 9-10 staff and contractors. Blom was President of RIH from January 2007 to 2009. He was paid approximately \$160,000 per year for half time work and lived in one of Haig's condominiums and used Haig's and an RIH car rent free. Lenz was the Administrative Director of RIH from January 2007 to 2010. She was paid \$165,00 in 2009, \$200,000 in 2010 and was given severance pay of \$107,000 in 2011. In 2012 Julie Molloy was hired as RIH Executive Administrative Assistant and also managed Haig's personal properties. Molloy was paid \$100,000 per year. Haig continued to fund RIH through 2012 by contributing \$716,100 in 2007; \$749,731 in 2008; \$726,232 in 2009; \$1,155,473 in 2010; \$1,318,500 in 2011 and approximately \$1,000,000 in 2012 from his own funds to maintain RIH's obligations and pay its debts. (Tr. 10/17/13 at 168, 180, 187, 189-191, 194, 197, 202-208; Tr.

12/3/13 at 49, 137; Exs. JC-9 to JC-14)

53. In January 2013 the RIH staff was downsized to one half-time person (Molloy @ \$72,000/year) and two consultants. Haig also reduced his personal financial contributions to RIH to minimally fund it. (Tr. 9/23/13 Vol. I at 31; Tr. 10/17/13 at 180)

## II. CONCLUSIONS OF LAW<sup>4</sup>

### A. JURISDICTION

HRS § 378-2(a)(1)(A) states in relevant part:

It shall be an unlawful discriminatory practice:

- (1) Because of . . . sex . . . [or] religion . . .
  - (A) For any employer to . . . discharge from employment, or otherwise to discriminate against any individual in . . . the terms, conditions, or privileges of employment. . .

HRS § 378-1 defines "employer" as "any person . . . having one or more employees". Pursuant to the above, this Commission has jurisdiction over employers who have one or more employees. Therefore, independent contractors are not covered under HRS Chapter 378. See In Re: Norma Santiago and Iolani Swim Club, DR No. 92-007 March 5, 1993.

#### 1) Whether Complainant was an employee

The weight of the evidence shows that Complainant was an

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<sup>4</sup> To the extent the following conclusions of law contain findings of fact, they shall be deemed incorporated into the findings of fact.

employee. In In Re: Santiago v. Iolani Swim Club, this Commission laid out the test to determine whether a person is an employee or independent contractor. Known as the "traditional economic realities test", the factors to be considered when determining if a worker is an employee or independent contractor include, but are not limited to:

- a) the extent of control the employer exercises over the details of the person's work;
- b) whether the worker is engaged in a distinct occupation or business;
- c) whether the work is done under the direction of the employer or by a specialist without supervision;
- d) the skill required in the particular job;
- e) whether the employer or worker supplies the instruments, tools and place of work;
- f) the length of time which the person is employed;
- g) the method of payment, by time or by the job;
- h) whether the work is part of the regular business of the employer;
- i) whether the parties believe they are creating the relationship of employer and employee;
- j) whether the person is in business for him or herself or dependent upon the business of another for his or her living;
- k) whether annual leave or other benefits like retirement are given;
- l) the nature of disciplinary mechanisms;
- m) whether the employer pays social security taxes;
- n) how the work relationship is terminated (i.e., by one or both parties);
- o) whether the worker can hire others to perform the work without the employer's approval.

Although Complainant signed the MOI, submitted weekly invoices that stated she was an "independent contractor" and included 4% for GET taxes, and RIH did not withhold Social Security taxes, nevertheless Haig controlled and directed

Complainant's work, he supplied the RIH office, equipment, business cards Complainant used, he hired Complainant's subordinates, and Complainant worked full time work and depended on the business of RIH for her living. In addition, the state unemployment office and federal IRS both found Complainant to be an employee of RIH.

2) Whether Complainant is estopped from claiming she is an employee

Respondents argue that Complainant is estopped from claiming that she is an employee because the March 2005 MOI and all of Complainant's invoices state that her services were rendered as an "independent contractor". The theory of equitable estoppel requires proof that one person willfully caused a second person to erroneously believe a certain state of things, and that second person reasonably relied on this erroneous belief to his or her detriment. Office of Hawaiian Affairs v. HCDCH, 117 Hawai'i 174, 203, 177 P.2d 884, 913 (2008). While the evidence shows that Complainant signed a five month MOI that identified herself as an independent contractor and submitted invoices over a two year period for services "as an independent contractor", the evidence also shows that during Complainant's tenure as RIH Executive Director, and pursuant to Evans Tudor's suggestions, Complainant submitted proposals to

Haig to reclassify herself and the RIH staff as employees. Therefore, Complainant did not willfully cause Haig to believe she was an independent contractor. In addition, Respondents did not show how they relied on these statements to their detriment. For these reasons Complainant is not estopped from claiming she is an employee covered by HRS Chapter 378.

Therefore, Complainant was an employee of RIH and this Commission has jurisdiction over her claims.

B. HOSTILE WORK ENVIRONMENT RELIGIOUS HARASSMENT

Respondents argue that no claim for hostile work environment harassment based on religion exists under Hawai'i law because such prohibition is not contained in the Hawai'i Revised Statutes, in the Hawai'i Administrative Rules and in Hawai'i case law. However, HRS § 378-2(a)(1)(A) states that it is a "discriminatory practice . . . because of religion . . . for any employer to discriminate . . . in the terms, conditions, or privileges of employment." This identical language in Title VII has been interpreted to prohibit hostile work environment harassment on any protected basis. See Meritor Savings Bank FSB v. Vinson, 477 U.S. 57, 63-66, 106 S.Ct. 2399, 2403-2404 (1986) (Title VII provision prohibiting discrimination with respect to terms, conditions or privileges of employment affords employees the right to work in an environment free from discriminatory

intimidation, ridicule and insult); Dediol v. Best Chevrolet, Inc., 655 F.3d 435 (5<sup>th</sup> Cir. 2011) (born again Christian's claims for religious harassment under Title VII); EEOC v. Sunbelt Rentals, Inc., 521 F.3d 306 (4<sup>th</sup> Cir. 2008) (Muslim employee's claims for religious harassment under Title VII). Therefore the Commission concludes that a claim for hostile work environment harassment based on religion exists under HRS § 378-2(a)(1)(A).

In addition, HAR § 12-46-151 states in relevant part:

Chapter 378, HRS, prohibits any employer or other covered entity from discriminating in employment because of a person's religion. . . .

As in hostile work environment sexual harassment cases, to establish a claim for hostile work environment religious harassment, Complainant must show that:

- a) she was subjected to religious slurs, insults or other verbal, visual or physical conduct relating to her religion;
- b) the conduct was unwelcome;
- c) the conduct was severe or pervasive;
- d) the conduct had the effect of either unreasonably interfering with C's work performance or created an intimidating, hostile or offensive work environment;
- e) Complainant perceived the conduct as have this effect; and
- f) Complainant's perspective was reasonably objective to a person of the same religion and same position.

See Arquero v. Hilton Hawaiian Village LLC, 104 Hawai'i 423, 428, 91 P.3d 505, 510 (2004). If Complainant establishes the above prima facie case, the burden shifts to Respondents to rebut such case by showing that: 1) the conduct did not occur;

2) the conduct was not unwelcome; or 3) the conduct was trivial or isolated.

Respondents argue that Complainant cannot establish the above prima facie case because: a) she was not subject to religious insults since almost all of Haig's emails were not sent directly to her; b) Haig's conduct did not interfere with her work performance; and c) she did not perceive the conduct as creating a hostile, offensive or intimidating work environment.

However, the evidence shows that Complainant did establish a prima facie case of religious harassment. Haig made numerous comments and insults to Complainant about her "Hebrew" foot shuffling to "steal" other people's intelligence. In several emails that were forwarded to, seen by, or sent to Complainant, Haig accused Complainant of being a Hebrew taking other Christian people's professional intelligence, stealing U.S. intelligence for Israel, harming her son and others, and several "Heil Israel" remarks. Complainant was also singled out and excluded from the Symphony Ball and riding in Haig's car because she was Jewish. Complainant did not welcome the conduct, and in fact talked to Haig and complained to Lenz, Carroll, Mossman, Riecker and Iaea about it. The conduct was both severe and pervasive as the comments and emails clearly targeted Complainant's Jewish religion, were sent to other RIH staff, and occurred throughout Complainant's tenure at RIH. The conduct

created a hostile and offensive work environment for Complainant as Haig became more critical and hostile towards Complainant. The evidence also shows that Complainant perceived the conduct as offensive and hostile, as Complainant's co-workers (Mead, Larson and Bowerman) and an RIH contractor (Torres) testified they saw Complainant become upset, angry, embarrassed, hurt and cry after seeing or hearing Haig's comments. The Commission also concludes that a reasonable Jewish woman in Complainant's position would find Complainant's perspective objective, since even Complainant's non-Jewish co-workers felt Haig's anti-Semitic conduct was hostile and offensive.

The Commission therefore concludes that Haig subjected Complainant to hostile work environment religious harassment.

### C. HOSTILE WORK ENVIRONMENT SEXUAL HARASSMENT

Sexual harassment is also prohibited under HRS § 378-2(a)(1)(A), and HAR § 12-46-109(a) which states in relevant part:

- (a) Harassment on the basis of sex is a violation of chapter 378, HRS. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual forms of harassment of a sexual nature constitute sexual harassment when:
  - (2) That conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

The test used to establish hostile work environment



religious harassment is also used to establish hostile work environment sexual harassment, except that Complainant must show that she was subjected to sexual advances, requests for sexual favors or other visual, verbal or physical conduct of a sexual nature, and that her perspective was reasonably objective to another woman in the same position. Arquero at 428, 505 P.3d at 510. Again, if Complainant establishes the above prima facie case, the burden shifts to Respondents to rebut such case by showing that: 1) the conduct did not occur; 2) the conduct was not unwelcome; or 3) the conduct was trivial or isolated.

Respondents argue that Haig's conduct - allegedly staring at Complainant's breasts and his two emails written during the last two weeks of Complainant's tenure (one of which was never sent to Complainant but found when she searched the RIH sever files) - is not severe or pervasive.

However, the Commission concludes that Haig did subject Complainant to hostile work environment sexual harassment. Complainant observed Haig staring at her breasts on more than one occasion. Although Complainant saw Haig's December 21, 2006 and December 31, 2006 memos during the last two weeks of her employment, this conduct was severe, since these two emails contained accusations that she did not wear a bra in order to seduce him into signing her invoices, and were sent to other RIH employees. Complainant was offended and insulted by these

accusations and upset and embarrassed that Haig had emailed these accusations to other RIH employees. The Commission also concludes that a reasonable woman in Complainant's position would also find such conduct offensive.

Moreover, the weight of the evidence shows that Haig's harassment of Complainant was based on a combination of two protected factors - because Complainant was **Jewish and a woman**. As courts have recognized, where two protected bases for discrimination exist, they often cannot be neatly reduced to distinct components. Lam v. University of Hawai'i, 40 F.3d 1551, 1561-1562 (9<sup>th</sup> Cir. 1994) In Lam, a Vietnamese woman sued the university for race and sex discrimination when she was not selected to be director of the law school's Pacific Asian Legal Studies Program. Id. at 1554. The district court granted summary judgment in favor of the university on the grounds that the final applicants for the position were an Asian male and a white woman. Id. at 1561. The Ninth Circuit reversed, stating that the district court's attempt to bisect a person's identity by race and gender often distorts or ignores the particular nature of their experiences. Id. at 1552. The court found that like other subclasses, Asian women are subject to a set of stereotypes and assumptions shared neither by Asian men nor by white women. Id. Therefore, when a plaintiff claims race and sex bias, it is necessary to determine whether the employer

discriminates on the basis of that combination of factors. Id.

In the present case the evidence shows that Haig harassed Complainant for being a Jewish woman. After the 2005 HWLF fundraiser, Haig felt that Complainant acted like a "queen" who was "stirring" herself to be superior and stomping down "everything else not Hebrew", and who was stealing other Christian people's and organizations' intelligence to be above them and to give that intelligence to her Hebrew people in Israel. He also felt that Complainant was a Jewish seductress enticing him to sign her invoices. Thus, if viewed as an intersectional claim (religion and sex), the aggregate weight of the evidence shows that Complainant was sexually harassed as a Jewish woman.

#### D. TERMINATION BASED ON RELIGION

A complainant can prove discriminatory discharge in two ways. First, under the "mixed motive" approach, the complainant must show by direct or circumstantial evidence that discriminatory factors motivated the adverse employment action. Shoppe v. Gucci, 94 Hawai'i 368, 377-378, 14 P.3d 1049, 1058-1059 (2000); Desert Palace, Inc. v. Costa, 123 S.Ct. 2148, 2153-2155, 539 U.S. 90, 98-102 (2003). Once the Executive Director and Complainant present evidence of discriminatory intent, the burden of proof shifts to Respondents to either: 1) rebut such

evidence by proving that it is not true; 2) establish an affirmative defense; or 3) limit, but not avoid liability by showing mixed motives for the actions (proving by the preponderance of the evidence that they would have acted as they did without regard to Complainant's protected status). Id., In Re Smith v. MTL Inc., Docket No. 92-003-PA-R-S (1993).

Second, a complainant may prove discriminatory discharge through circumstantial evidence of disparate treatment. When analyzing this type of claim, the Hawai'i Supreme Court has adopted the burden-shifting analysis set forth in McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S.Ct. 1817 (1993). Shoppe at 378, 14 P.3d at 1059. Under the McDonnell Douglas framework the complainant must first establish a prima facie case by demonstrating that he or she: a) is a member of a protected class; b) is qualified for the position; c) has suffered some adverse employment action; and d) the position still exists. Id. Once the complainant establishes a prima facie case of discrimination, the burden shifts to respondent to articulate a legitimate, nondiscriminatory reason for the adverse employment action. Id. The burden then reverts to the complainant to demonstrate that the respondent's proffered reasons were pretextual, either by showing that a discriminatory reason more like motivated the employer, or by showing that the employer's explanation is unworthy of credence. Id.

In this case, under the mixed motive approach, there is direct and circumstantial evidence that shows that Respondents terminated Complainant because of her religion. In terms of direct evidence, Haig, in his memo dated December 21, 2006, explicitly states that Complainant should be fired because of her unsafe Hebrew practices. Haig also told Mead that Complainant should be fired for "Heil Israel . . . unsafe policies."

In terms of circumstantial evidence, the record shows that after attending the 2004 HWLF fundraiser, Haig expressed concerns about Complainant becoming RIH's executive director because of her "subversive Hebrew intent." Haig became more hostile towards Complainant after the 2005 HWLF Halloween fundraiser, and had Lenz inquire with Snelling about executive director applicants with graduate degrees. In April 2006 Haig worked with Blom and Lenz to draft a new executive director position description that required a college degree, knowing that Complainant did not have one. On December 30, 2006 Iaea, representing Haig, sent Complainant an email stating that Complainant's employment with RIH would cease as of January 3, 2007 and instructed her to turn in her keys, security card and any other RIH property. Iaea, in her summary of the January 2, 2007 meeting with Complainant, stated that Complainant appeared

to be covering "her bases . . . in case this may be the reason **she is being terminated.**" (Emphasis added.) On January 3, 2007 Iaea sent Complainant an email instructing her to stop all work on RIH projects and not to attend any events or functions or make any representations on behalf of RIH. Complainant was subsequently replaced by Blom and Lenz, who are both Christian.

Respondents contend that Complainant was never terminated from RIH and that she instead failed to re-apply for employment with Snelling after the January 2007 reorganization. However, the weight of the evidence shows that this reason is not credible and is false, and that Complainant was terminated. Haig stated that Complainant "should be fired" in his December 21, 2006 email, and stated this to Mead. Iaea, in her summary of the January 2, 2007 meeting with Complainant stated that Complainant "is being terminated." By the end of December 2006, Lenz had been promoted to "Administrative Director" and had written a transition report; by the first week of January 2007 Blom was offered the RIH presidency, and when Blom returned to Hawai'i that spring he ran all the RIH projects and work. Complainant testified that when she made a follow-up call to Iaea near the end of January 2007 about the status of her RIH executive director position, Iaea informed her that Blom had already been hired. By early January 2007 Blom and Lenz had taken over Complainant's executive director functions and

Complainant would not have been re-hired as RIH executive director even if she applied to Snelling.<sup>5</sup>

The Commission therefore concludes that Complainant was terminated because of her religion.<sup>6</sup>

#### E. TERMINATION BASED ON RETALIATION

The Executive Director and Complainant contend that Complainant was also terminated in retaliation for complaining about Haig's harassment. To establish retaliation, a complainant must show that: a) complainant opposed a discriminatory practice; b) complainant was subjected to adverse treatment (i.e., terminated) by respondent; and c) there was a causal connection between the opposition and the adverse treatment. Gonsalves v. Nissan Motor Corp., 100 Hawai'i 149, 162, 58 P.3d 1196, 1209 (2002), Schefke v. Reliable Collection Agency, Ltd., 96 Hawaii 408, 426, 32 P.3d 52, 70 (2001). Once a complainant establishes this prima facie case, the burden then shifts to respondent to articulate a legitimate nondiscriminatory reason for its decision. Schefke at 426, 32 P.3d at 70. The burden then shifts back to the complainant to

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<sup>5</sup> For these reasons, even under the McDonnell Douglas circumstantial evidence framework adopted by the Hawaii Supreme Court in Shoppe, the Commission concludes that Respondent's non-discriminatory reason for Complainant's separation (that she was not terminated but failed to apply for employment with Snelling after the re-organization) is pretextual.

<sup>6</sup> Since Respondents do not contend that Complainant was terminated for non-discriminatory reasons, the mixed motive defense does not apply to this case.

show evidence demonstrating that the reason given by the respondent is pretextual. Id.

In this case, the evidence shows that Complainant complained about Haig's religious harassment in the latter half of 2006 to Haig, Lenz, RIH attorneys Carroll and attorney/board members Riecker and Mossman. On January 2, 2007 she also complained to Iaea. Complainant was terminated on January 3, 2007 and this occurred within six months of her complaints.

Respondents again contend that Complainant was never terminated in retaliation for complaining about Haig's harassment and that Complainant instead failed to apply for employment with Snelling after the January 2007 reorganization. Because the Commission finds that Respondents' non-discriminatory reason is pretextual, the Commission concludes that Complainant was terminated in retaliation for complaining about the harassment.

## F. LIABILITY

### 1. Respondent RIH

HAR § 12-46-151 states in relevant part:

Chapter 378, HRS, prohibits any employer or other covered entity from discriminating in employment because of a person's religion. . .

RIH is therefore liable for terminating Complainant because of her religion.



HAR § 12-46-109(c) states in relevant part:

An employer shall be responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden, and regardless of whether the employer or other entity knew or should have known of their occurrence. . . .

The Commission determines that this standard should also apply in religious harassment cases. Since Haig was Complainant's supervisor and harassed Complainant because of her religion and sex, RIH is liable for his harassment.

2. Respondent Haig

The Executive Director and Complainant contend that Haig is individually liable for harassing and terminating Complainant because: a) RIH was merely Haig's alter-ego; and, alternatively, b) Haig aided and abetted in the discriminatory conduct.

a) Whether Haig is liable if RIH is merely his alter-ego

In its Scheduling Conference Statement, the Executive Director alleges that Haig was an employer under HRS § 378-1 and was conducting business in the State of Hawaii. In the joint Executive Director/Complainant Proposed Conclusions of Law, the Executive Director and Complainant argue that Haig should be individually liable since RIH was his alter ego.

In Kahili, Inc. v. Yamamoto, 54 Haw. 267, 271-72, 506 P.2d 9, 11-12 (1973), and more recently in Roberts Hawaii School Bus,

Inc. v. Laupahoehoe Transportation Co., Inc., 91 Hawai'i 224, 241-242, 982 P.2d 853, 870-871 (1999), the Hawai'i Supreme Court held that courts may look past a corporation's formal existence to hold shareholders or other controlling individuals liable where recognition of the corporate fiction would bring about injustice and inequity **or** when there is evidence that the corporate fiction has been used to perpetuate a fraud or defeat a rightful claim. Since corporations are formed to limit liability, courts generally apply the alter ego doctrine with great caution and reluctance. Roberts at 241-242, 982 P.2d at 870-871. The Court states that before a corporation's acts and obligations can be legally recognized as those of a particular person, it must appear that: (a) the corporation is not only influenced and governed by that person, but that there is such a unity of interest that the individuality, or separateness of such person and the corporation has ceased, and (b) adherence to the fiction of the separate existence of the corporation would, under the particular circumstances sanction a fraud **or** promote injustice. Id. at 242, 982 P.2d at 871.

The Court then lists numerous factors to weigh in determining whether a corporation is the alter ego of another.

The relevant factors to this case are:

1. The holding out by an individual that he is personally liable for the debts of the corporation;
2. The identification of the equitable owners thereof with the

- domination and control of the two entities;
3. Identity of the directors and officers of the two entities in the responsible supervision and management;
  4. Sole ownership of all the stock in a corporation by one individual or the members of a family;
  5. The use of the same office or business location;
  6. The employment of the same employees and/or attorney;
  7. The use of a corporation as a mere shell, instrumentality or conduit for a single venture of the business of an individual or another corporation;
  8. The use of the corporate entity to procure labor, services or merchandise for another person or entity.

Id.

The weight of the evidence in this case shows that RIH was the alter ego of Haig. Haig provided virtually all the funding for RIH, set the organization's budget, and paid its debts. He completely controlled RIH in terms of hiring its employees and controlling all the projects and work of the employees.

During Complainant's tenure, the RIH board did not meet, and certain people listed as board members did not even know that they were on the board. RIH Board members did not view their roles as performing organizational governance functions, or as providing meaningful oversight over Haig. Rather, board members viewed their role as being to "help" Haig with "his" organization. Haig, not the RIH board of directors, adopted RIH's annual budget, decided whether and when to make capital improvements, or adopt policies. Haig, and not the RIH board of directors, decided to hire and fire RIH's executive officers and attorneys. As of 2007, RIH's bylaws and articles of

incorporation had been lost, and even the board's ostensible treasurer, Evans Tudor, could not obtain a copy of these documents to use in preparing RIH's five year 501(c)(3) review by the IRS.

The same attorneys (Carroll and Riecker) represented both RIH and Haig personally. Blom, who subsequently became the RIH President, lived rent-free in one of Haig's personally-owned condominiums and used one of Haig's personally owned cars, as well as the RIH company car, for his own use. While RIH was a private foundation, Molloy was employed to do RIH work, as well as to manage Haig's personal properties and legal affairs.

Recognizing the corporate fiction in this case would work an injustice, because since January 2013 Haig de-capitalized RIH, leaving it essentially judgment proof. From 2007 to 2012, Respondent Haig transferred \$716,100, \$749,731, \$726,232, \$1,155,473, \$1,318,500, and approximately \$1,000,000 respectively, from his own funds to maintain RIH's obligations and pay its debts. However, from January 2013 Haig radically reduced his personal financial support to RIH, effectively making RIH judgment proof in relation to this action. Therefore, like the Court in Kahili, the Commission concludes that, in the instant case, "the recognition of the corporate fiction would bring about injustice and inequity", that RIH was Haig's alter ego, and that Haig is individually liable for his

discriminatory conduct. See, Kahili, 54 Hawai'i at 271, 506 P.2d at 12.

b) Whether Haig is liable as an aider or abettor

HRS § 378-2(a)(3) states:

It shall be an unlawful discriminatory practice . . .

- (3) For any person, whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the discriminatory practices forbidden by this part, or attempt to do so . . .

However, this claim was not raised in Complainant's complaint, nor in the Executive Director's Scheduling Conference Statement.<sup>7</sup> The Executive Director's Scheduling Conference Statement alleges that Haig was individually liable as a supervisor/agent/employer under HRS § 378-1. The Executive Director and Complainant never alleged a claim against Haig as an "aider or abettor" under HRS § 378-2(a)(3) until after the close of the contested case hearing. The Commission therefore concludes that this claim is barred.

G. REMEDIES

The Executive Director and Complainant request that Respondents be ordered to pay Complainant back pay, front pay, and compensatory and punitive damages. The Executive Director also seeks the following equitable relief: a) a cease and desist

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<sup>7</sup> Complainant did not file a Scheduling Conference Statement, although as an intervnor she could have done so.

order from discriminating against Complainant and all other RIH employees on the basis of religion, sex or retaliation;

b) development and implementation of a non-discrimination employment policy; c) employee and management training on such policy; d) dissemination of the policy to all employees, managers and agents; and e) requiring Respondents to publish the results of this contested case in a statement provided by the Commission in a newspaper having state-wide circulation.

1. Back pay

Back pay encompasses the amount Complainant could have earned if she continued to work for RIH but for her termination. Respondents have the burden to prove any offsets to Complainant's expected earnings.

The evidence shows that Complainant was paid \$1,500 per week (\$78,000/year) and this payment stopped on January 3, 2007. The evidence also shows that Complainant was employed by the HWBC from July 2007 through June 2009 and was paid about \$104,000 with benefits. She also received a settlement of \$20,000 for back wages. The Commission determines that Complainant's wages and benefits from HWBC during July 2007 - June 2009 are equal to the amount she would have earned if she continued to be employed by RIH, and therefore will not award back pay for that two year period.

However, in July 2009 Complainant lost her HWBC job when HWBC was unable to obtain continued funding, and Complainant has since been unemployed. Liability for back pay may resume if subsequent employment ends. See Johnson v. Spencer Press of Me., Inc., 364 F.3d 368, 381-383 (1<sup>st</sup> Cir. 2004) (back pay not permanently terminated when employee is fired for misconduct or voluntarily quits interim employment), Daniel v. Loveridge, 32 F.3d 1472, 1477-1478 (10<sup>th</sup> Cir. 1994) (back pay awarded for periods after plaintiff laid off from three subsequent jobs).

The evidence also shows that by January 2013 the RIH staff was downsized to one half-time person (Molloy), who also managed Haig's personal properties. Aside from Complainant's work with HWBC, Respondents have not presented any evidence to show any other offsets to Complainant's expected earnings.

For these reasons, the Commission determines that Complainant should be awarded back pay from the period between January 3, 2007 through July 1, 2007 (26 weeks), and July 2009 to December 2012 (182 weeks) which amounts to \$312,000. The Commission declines to add federal and state taxes because these were not deducted by RIH during Complainant's tenure, but will award pre-judgment interest of \$31,200 for a total back pay award of \$343,200.

## 2. Front pay

Because the evidence shows that RIH downsized to one

half-time staff by January 2013, Commission determines that Complainant would have ceased working with RIH by that date and declines to award front pay.

### 3. Compensatory damages

Pursuant to HRS § 368-17, the Commission has the authority to award compensatory damages for any pain, suffering, embarrassment, humiliation or emotional distress Complainant suffered as a result of Haig's harassment and her termination. The evidence shows that from April 2005 through December 2006 Complainant was embarrassed, annoyed, humiliated, angry, upset, and cried as a result of Haig's constant discriminatory comments, emails, and hostile treatment. Complainant also had an emotional breakdown after Haig accused her of being responsible for the death of her son. During the last half of 2006 Complainant also had stomach aches, problems sleeping and broke out in skin lesions. This distress was observed by Mead, Torres, Larson, Bowerman and Brad Bate.

The Commission therefore determines that the amount of \$200,000 should be awarded to Complainant for her emotional distress.

### 4. Punitive damages

HRS § 368-17 also authorizes the Commission to award punitive damages. Punitive damages are assessed to punish a respondent for aggravated or outrageous misconduct and to deter



the respondent and others from similar conduct in the future. Misaki v. General Motors Corp., 71 Haw. 1, 6-8, 780 P.2d 566, 570-571 (1989). Punitive damages are award only when a respondent's wrongdoing has been intentional and deliberate, and has the character of outrage associated with a crime. Id. The inquiry focusses on the respondent's mental state and to a lesser degree on the nature of his or her conduct. Id. In the present case, the Executive Director and Complainant are required to show, by clear and convincing evidence, that Respondents acted wantonly, or with criminal indifference to civil obligations, or where there is wilful misconduct or an entire want of care which raises the presumption of a conscious indifference to consequences. Id. at 15-17, 570 P.2d at 574-575.

The amount of punitive damages is determined by considering: 1) the degree of malice and reprehensibility of the conduct; 2) the respondent's financial situation; and 3) the amount of punitive damages which will have a deterrent effect on the respondent in light of his financial situation.

The evidence shows that Complainant notified Haig, RIH board members Riecker, Mossman and Lenz, and RIH attorneys Riecker and Carroll about Haig's religious harassment and they did nothing to investigate or take corrective action. In addition, Mead forwarded one of Haig's emails to Carroll and Mossman and asked them to take action, but Haig continued his

anti-Jewish comments and Carroll and Mossman did nothing. This shows a conscious indifference to civil obligations and consequences, and RIH should be subject to punitive damages.

The evidence also shows that Complainant and Mead informed Haig that his anti-Jewish comments were unwelcome and hurtful; Haig was careful to make his oral anti-Jewish comments to Complainant mainly when they were alone; Haig was careful not to send most of his emails to Complainant; and according to Mead's testimony, Haig sometimes appeared to enjoy upsetting Complainant. Therefore, Haig's conduct was clearly intentional, deliberate and indifferent to consequences, and he should be subject to punitive damages.

Taking into account the degree of malice and reprehensibility of RIH and Haig's conduct, Haig's financial situation and the amount of punitive damages which will have a deterrent effect on RIH and Haig's future conduct in light of Haig's financial situation, the Commission determines that an award of \$300,000 as punitive damages is appropriate.

##### 5. Attorneys fees and costs

Since Complainant was the prevailing party, pursuant to HRS 368-17 she should be awarded her reasonable attorneys fees and costs, which should be submitted to and determined by the Commission.

6. Declaratory and equitable relief

The Commission agrees with the recommended declaratory and equitable relief awarded by the Hearings Examiner.

**III. ORDER**

IT IS HEREBY ORDERED that:

1. Respondents RIH and Haig pay Complainant back pay in the amount of \$343,200;

2. Respondents RIH and Haig pay Complainant damages of \$200,000 as compensation for injury to her feelings, emotions and mental well-being;

3. Respondents RIH and Haig pay Complainant punitive damages of \$300,000;

4. Respondents RIH and Haig pay Complainant her reasonable attorneys' fees and costs to be submitted and determined by the Commission;

5. Respondents RIH and Haig cease and desist from discriminating against all RIH employees on the basis of religion or sex;


6. Respondents RIH and Haig develop and implement a non-discrimination employment policy approved by the Executive

Director, to immediately disseminate such policy to all employees, managers and agents, and conduct employee and management training on such policy within 90 days of their adoption; and

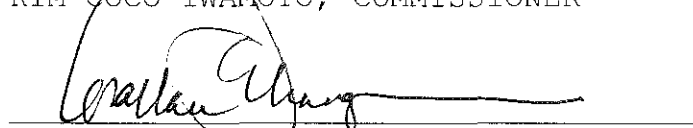
7. Respondents RIH and Haig publish the results of this contested case in a statement provided by the Executive Director in a newspaper having state-wide circulation within 60 days of this order.

Dated: Honolulu, Hawai'i August 26, 2014.

  
LINDA HAMILTON KRIEGER, CHAIR

  
RAYMUND LIONGSON, COMMISSIONER

  
KIM COCO IWAMOTO, COMMISSIONER

  
WALLACE FURUNAGA, COMMISSIONER

  
ARTEMIO BAXA, COMMISSIONER

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Attorney for Respondents Research Institute For Hawaii.USA  
and Christopher Damon Haig

NOTICE: Under HRS § 368-16(a), a complainant and respondent have the right to appeal a final order of the Commission by filing an appeal with the circuit court within thirty (30) days of service of a final decision and order of the Commission.

CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

William D. Hoshijo, ) Docket No. 13-001-E-RH-SH-R  
Executive Director, on )  
behalf of the complaint ) DECLARATION OF ARTEMIO C. BAXA  
filed by KAY LORRAINE BATE, )  
)  
and )  
)  
KAY LORRAINE BATE, )  
)  
Complainant-Intervenor, )  
)  
vs. )  
)  
RESEARCH INSTITUTE FOR )  
HAWAII.USA and CHRISTOPHER )  
DAMON HAIG, as an individual, )  
)  
Respondents. )  
)  
\_\_\_\_\_ )

DECLARATION OF ARTEMIO C. BAXA

I, ARTEMIO C. BAXA, declare under penalty of law that the foregoing is true and correct:

1. I am a Commissioner of the Hawai'i Civil Rights Commission.
2. I have read the entire transcript of the oral argument before the Hawai'i Civil Rights Commission in this case, which was held on April 30, 2014.

Dated: Wailuku, Hawai'i

August 20, 2014.  
Artemio C. Baxa  
ARTEMIO C. BAXA