

HAWAII CIVIL RIGHTS COMMISSION
STATE OF HAWAII

In the Matter of)	Docket No. 92-201PE-SH
)	Fep No. WH 3962
DOLORES R. SANTOS,)	
)	
Complainant,)	
_____)	
)	
MASAMI "SPARKY" NIIMI and)	
HAWAIIAN FLOWER EXPORTS, INC.)	
)	
Respondents.)	
_____)	

ORDER DENYING MOTION FOR ORDER GRANTING DECLARATORY RELIEF

The Executive Director ("Petitioner") filed a Motion for Order Granting Declaratory Relief on March 13, 1992, and a Supplemental Memorandum in Support of Motion on March 18, 1992. Respondent has not filed any Memorandum in Opposition.

The Motion will be treated as a Petition for Declaratory Relief under Hawaii Administrative Rules ("H.A.R.") § 12-46-61. The Commissioners met on March 20, 1992, to consider disposition of the petition. Pursuant to H.A.R. § 12-46-63(b)(1), the Commission is authorized and chooses to summarily decide the Petition.

Petitioner seeks a declaration that service of the final conciliation demand letter, for the purposes of commencement of proceedings before the hearings examiner under H.A.R. § 12-46-18, is completed upon mailing of the demand letter. Petitioner argues that a liberal construction of service only requires mailing by certified mail, return receipt requested, as allowed under H.A.R. § 12-46-17(b)(1), and does not require receipt of the letter by respondent.

The Commission is required to read a section of a rule in context of the entire rule. H.A.R. § 12-46-17(c) allows the respondent fifteen days to act after the receipt of the demand letter. H.A.R. § 12-46-17(d) provides that the executive director shall notify the complainant of the failure of conciliation efforts if there is no response or agreement within fifteen days after receipt of the letter. The rule does not specify that service is effected by the mailing of the letter.¹

The Commission is concerned about fairness to the respondent if service is interpreted as being completed upon mailing of the letter. If service does not allow time for the actual receipt of the letter, a respondent will not have the full fifteen days to consider the demand letter and conciliate the complaint. In order to promote conciliation efforts under H.R.S. §§ 368-13(d) and 14, the Commission declares that service under H.A.R. § 12-46-17 must include respondent's receipt of the demand letter.

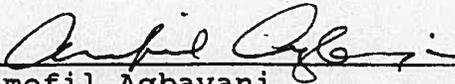
IT IS HEREBY ORDERED THAT the Motion for Order Granting Declaratory Relief is summarily denied under H.A.R. § 12-46-63(b)(1).

Petitioner may seek reconsideration under H.A.R. § 12-46-38 by filing a motion with ten days of receipt of this order.

¹ The rule defining service, H.A.R. § 12-46-28, does not assist the Commission in deciding the issue.

Petitioner may seek judicial review in the circuit court under H.R.S. §§ 91-8 and 14 within thirty days after service of the final decision and order.

Dated: Honolulu, Hawaii, March 20, 1992.



Amefil Agbayani
Chairperson
Hawaii Civil Rights Commission