

CIVIL RIGHTS COMMISSION

STATE OF HAWAII

WILLIAM D. HOSHIJO,  
Executive Director, on  
behalf of the complaint  
filed by KAY LORRAINE BATE,

vs.

RESEARCH INSTITUTE FOR  
HAWAII USA and CHRISTOPHER  
HAIG, as an individual,

Respondents.

) Docket No. 13-001-E-RH-SH-R  
)  
) HEARINGS EXAMINER’S FINDINGS  
) OF FACT, CONCLUSIONS OF LAW  
) AND RECOMMENDED ORDER;  
) APPENDIX “A”

CIVIL RIGHTS COMMISSION  
HONOLULU, HAWAII

14 MAR 10 P5:07

**HEARINGS EXAMINER’S FINDINGS OF FACT;  
CONCLUSIONS OF LAW; AND RECOMMENDED ORDER**

**I. INTRODUCTION**

**A. CHRONOLOGY**

The procedural history of this case is set forth in the attached Appendix A.

**B. BRIEF SUMMARY OF THE PARTIES’ CONTENTIONS**

Executive Director and Complainant contend that Complainant was an employee<sup>1</sup> of RIH USA, and that Respondents allowed and/or created a hostile work environment because of Complainant’s sex and religion. They further argue that Complainant objected to the mistreatment because of her religion and Respondents discharged Complainant in retaliation. As a result, Complainant was harmed by unlawful discrimination based on sex and religion.

<sup>1</sup> Although Respondents previously argued Complainant was an independent contractor, they admit in proposed Conclusions of Law that the Commission has jurisdiction.

Respondents deny any unlawful discrimination based on sex and religion. Respondents further argue that there was a legitimate, nondiscriminatory reason for Complainant's separation and that Complainant never applied for a new position with the new company after her position ended.

## **II. RULING**

Complainant was an employee of RIH USA. Respondent RIH USA is liable for creating a hostile work environment based on religion. Respondent Haig is not individually liable.

## **III. FINDINGS OF FACT<sup>2</sup>**

### COMPLAINANT'S BACKGROUND

1. Complainant was 66 years old at the time of the hearing on September 23, 2013. (Tr. 9/23/13 at 20)
2. In or about 1968, Complainant, at the age of 21 years old, had converted to Judaism, from Methodist. (Tr. 9/23/13 at 54)
3. From the time Complainant converted to Judaism, she continued to be an observant Jew and tried not to work on the Sabbath, which is on Saturday. (*See*, Tr. 9/23/13 at 60)
4. In 1994, Complainant, at the age of 46 years old, moved to Hawaii with her husband, Brad Bate ("Mr. Bate"). (Tr. 9/23/13 at 23 and 10/15/13 at 96) Complainant did not intend to retire from working. (Tr. 9/23/13 at 23)
5. After arriving in Hawaii, Complainant started volunteering with Hawaii Women's Legal Foundation ("HWLFF") including assisting with their annual event which raises money. (Tr. 9/23/13 at 25-26)
6. Complainant also started her own business, "Organization Headquarters," providing Executive Director services to companies which did not have a dedicated Executive Director. (Tr. 9/23/13 at 26-28) Complainant believed she had a good business model, but her

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<sup>2</sup> To the extent that the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

clients could not pay her and she shut down the business.

7. After closing her business providing Executive Director services, Complainant stopped working at all for approximately two months. (Tr. 9/23/13 at 27)

#### THE SNELLING RELATIONSHIP

8. In or about July 2004, Complainant applied for work through Snelling, which is an employment company. (Tr. 9/23/13 at 28) Complainant filled out and signed a Snelling application. (Tr. 10/22/13 at 17-18) The general manager of Snelling at that time was Kenani Iaela ("Ms. Iaela"). (Tr. 10/22/13 at 13-14)

9. Shortly thereafter, Ms. Iaela sent Complainant to an interview with Snelling's client, RIH USA. (Tr. 10/22/13 at 16) RIH USA accepted Complainant and Complainant started working at the RIH USA work site through Snelling. (See, Tr. 9/23/13 at 29)

10. Complainant was an employee of Snelling even though she worked at the RIH USA worksite. (See, Tr. 10/22/13 at 17-19) Complainant was not an independent contractor for Snelling or RIH USA at that time.

11. Complainant shared an office with Heidi Lenz ("Ms. Lenz") at the RIH USA worksite and Complainant performed various unspecified duties. (Tr. 9/23/13 at 29) Complainant did not believe she had a job title. (Tr. 9/23/13 at 29)

12. After a couple of weeks, Complainant asked Ms. Lenz how to get along with Respondent Haig and she said, "This is Christopher's stage. He pays us. We are his players. Just do what he wants." (Tr. 9/23/13 at 32-33)

13. Complainant initially worked 20 to 30 hours per week and Snelling considered her status to be part-time. (Tr. 9/23/13 at 29) After three weeks, Complainant started receiving benefits through Snelling. (Tr. 9/23/13 at 33)

14. After Complainant started working at the RIH USA worksite, Ms. Iaela, on behalf of Snelling, continued having meetings with Respondent Haig and Ms. Lenz approximately twice a month until 2006. (Tr. 10/22/13 at 19) Complainant never attended any of those meetings. (Tr. 10/22/13 at 62)

#### RIH USA'S BACKGROUND

15. The stated purpose of RIH USA is a historic research institute. Ex. JC-6.

16. The focus of RIH USA's intended research was to provide a new perspective on the U.S. Constitution, the Founding Fathers of the United States, and "U.S. literacy legal precedent" and their relationship to Hawaii. (Tr. 10/21/13 at 12)

17. RIH USA was initially organized as a tax-exempt non-profit organization under Section 501(c) of the IRS tax code. (See, Tr. 10/16/13 at 105-106)

18. Despite RIH USA's status as a 501(c) tax-exempt non-profit organization, Respondent Haig provided close to 100% of the funding for RIH USA. (Tr. 10/16/13 at 110) Respondent Haig was the principal source of income for RIH USA. (Tr. 10/21/13 at 97) If RIH USA lacked funds, Respondent Haig made a deposit from his personal funds. (Tr. 10/16/13 at 95) Complainant could not distinguish between the actions of RIH USA and of Respondent Haig individually. (Tr. 10/15/13 at 132)

19. RIH USA's source of funding caused its treasurer Nancy Evans Tudor ("Ms. Tudor"), who was also named as a director, to believe RIH USA was a private foundation and not a public charity. (Tr. 10/16/13 at 109) This was a concern to Ms. Tudor given RIH USA's 501(c) status would be re-evaluated after five years. (Tr. 10/16/13 at 105-106)

20. On September 10, 2004, Respondent Haig certified to the Department of Commerce and Consumer Affairs ("DCCA") as of July 1, 2004 that the officers and directors of RIH USA, a domestic non-profit corporation, were himself as a director and president; Ms. Tudor as a director and treasurer; and Guy P. Ontai ("Mr. Ontai") as a director. Ex. JC-6.

21. RIH USA's annual filings to the DCCA of its officers and directors as of July 1, 2005 and July 1, 2006 were not filed until May 29, 2007. Ex. JC-6. However, it was unclear if anyone, in 2005 and 2006, actually knew who the officers of RIH USA were in 2005 and 2006. (See, Tr. 10/16/13 at 100)

22. Respondents provided no minutes of any Board of Directors ("BOD") meetings between November 28, 2001 and June 1, 2009. See, Exs. R-18; R-19; R-172; R-175; R-176; R-178; and R-179.

23. RIH USA had approximately 10 workers at any given time from 2004 to 2006. (Tr. 10/16/13 at 37-38)

24. From 2004 to 2007, RIH USA only had one computer server ("file server"), which was used for storing files for RIH USA workers to access. (Tr. 10/16/13 at 26-28)

Beginning in 2005, everyone in RIH USA had access to the file server. (Tr. 10/16/13 at 13-14)  
RIH USA did not have a mail server or any other servers until 2008 or 2009. (Tr. 10/16/13 at 27)

#### RESPONDENT HAIG'S BACKGROUND

25. Respondent Haig's personal net worth is in excess of \$50 million. *Consolidated Order* filed on August 15, 2013.

26. Respondent Haig has no medical or mental conditions upon which he is relying as a legal defense to any of the allegations against him. (Tr. 10/21/13 at 107-108)

27. Respondent Haig has a tendency to start, but not finish things. (Tr. 9/23/13 at 43-44)

28. Respondent Haig has been described as having a Dr. Jekyll and Mr. Hyde personality, i.e. "bubbly and happy and smiley," but later in the same day as "mean spirited" (Tr. 10/17/13 at 14-16); "opinionated" and "peculiar" (Tr. 10/17/13 at 80); "unusual" (Tr. 9/24/13 at 140); and "eccentric" (Tr. 9/24/13 at 140).

29. Respondent Haig once blew a fan in an interviewee's face, with a force more than a normal person could possibly bear, because he thought it helped her mind. (Tr. 10/17/13 at 80)

30. Respondent Haig has an affinity for terms. (Tr. 9/24/13 at 140) Amongst the terms often used at the RIH USA worksite by Respondent Haig consistent with his description: "safe" (Tr. 10/16/13 at 221) or "safety" (Tr. 10/22/13 at 126); "colonial powers" (*See e.g.*, Ex. JC-50a); "foot shuffling" (Tr. 10/16/13 at 226-227); "trampling intelligence" (Tr. 10/16/13 at 37); and "sucking intelligence" (*See*, Tr. 10/17/13 at 21-22).

31. Respondent Haig constantly refers to safe, safety, Constitutionally safe, preambular, stealing information, and foreign powers. (Tr. 10/17/13 at 84-87)

32. With respect to "safe" or "safety," Respondent Haig contends he wrote reports because of "OSHA." (Tr. 10/21/13 at 8-9) Respondent Haig's references to safety have been interpreted as "integrity of the institution." (Tr. 10/22/13 at 126)

33. Respondent Haig's concern as to "colonial powers" began when he lived in Washington and learned about breaches and data security; and learned to be vigilant. (Tr. 10/21/13 at 10)

34. Respondent Haig believes certain people can use their feet in a physical manner to

manipulate others and/or steal their intelligence. See, Ex. JC-30.

35. Claimant occasionally heard Respondent Haig refer to foot shuffling without also referencing Hebrew feet. (Tr. 9/24/13 at 233-234)

36. Respondent Haig used the term "foot shuffling" with respect to Charles Reed Bishop and Bernice Pauahi Bishop (Tr. 10/16/13 at 226-227)

37. Respondent Haig believes certain people can "suck" intelligence from others. As a result, Respondent Haig specifically prohibited Complainant from having a vacuum cleaner at the RIH USA worksite to prevent her from sucking out his intelligence. (Tr. 10/17/13 at 21-22)

38. Respondent Haig believes Complainant extracted his "professional intelligence" making him duller and dumber. (Tr. 10/21/13 at 25-26)

39. Respondent Haig believes certain people, including Complainant, can steal his "intellectual property" while those people stand on the sidewalk. (Tr. 10/17/13 at 49)

40. Respondent Haig's eccentric behavior caused Complainant to once state, "I think Christopher is just doing his thing...". Ex. R-75.

41. Jeff Mead ("Mr. Mead"), who also worked at the RIH USA worksite, considers himself a friend of Respondent Haig (Tr. 10/16/13 at 226) Mr. Mead chose not to directly address the absurdities displayed by Respondent Haig at the worksite if Mr. Mead considered the absurdities self-evident. (Tr. 10/16/13 at 228-229)

THE FIRST HWLF FUNDRAISING EVENT  
ATTENDED BY RESPONDENT HAIG

42. On October 18, 2004, Brynn Rovito ("Ms. Rovito"), "legal assistant" to Respondent Haig asked him, via email, about Complainant's "show on Saturday" referring to a HWLF fundraising event. Ex. JC-18. Respondent Haig responded by stating, among other things:

She has produced the events for several years, by 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.)

**I am suspicious on that basis of her taking on the executive directorship of Research Institute for Hawaii.USA!**

With respect for the US Constitutionally protected equal rights of safety of all US citizens and equal rights of due process under US Constitutional law, these statements have been made to protect our US constitutional [sic] rights which have been deprived by the immoral hazards and corruption by defendants described above. Enforceable legal actions appear to be necessary with respect for safer rights of US Constitutional procedural and substantive due process under all US relevant laws. [hereinafter referred to as "Safety Language"]

Ex. JC-18 (bold, underline, and brackets added). Ms. Rovito replied and stated, among other things, "Well, I hope you at least had an enjoyable evening for what it was worth. I forgot to remind you that you have a dental appointment with Dr. Scheer this morning at 11:30." Ex. JC-18.

RIH USA'S MARCH 2005 MEMORANDUM OF INTENT WITH  
CLAIMANT AS TO EXECUTIVE DIRECTOR POSITION

43. On March 11, 2005, Complainant notified Snelling, with Respondent Haig's approval, that her employment with Snelling would end. *See*, Ex. JC-75.

44. On March 14, 2005, Respondent Haig presented a first draft of the "Detail of Responsibilities of the Executive Director" to Complainant. *See*, Ex. JC-75.

45. Effective March 14, 2005, Complainant began invoicing RIH USA directly for her services. *See*, Ex. JC-75; *See also*, R-29.

46. On March 15, 2005, a second draft of "Detail of Responsibilities Executive Director Research Institute for Hawaii.USA" ("Details of Responsibilities") was created. Ex. JC-74.

47. The Details of Responsibilities stated the duties of a nonprofit Executive Director "**usually**" fall within certain areas and then enumerated those usual areas. Ex. JC-74 (bold added).

48. The Details of Responsibilities stated an Executive Director provides management support to the organization and is an officer of the corporation. Ex. JC-74

49. The Details of Responsibilities stated an Executive Director serves as compliance officer for the organization, initiates legal inquiries as necessary to ensure that the non-profit operates within the applicable laws and regulations, including those of the corporation. Ex. JC-74.

50. The Details of Responsibilities stated an Executive Director prepares the annual

budget for approval by the BOD. Ex. JC-74.

51. The Details of Responsibilities stated an Executive Director oversees the organization's website and other educational publications and productions. Ex. JC-74.

52. The Details of Responsibilities stated an Executive Director serves as coordinator of educational programs for the organization. Ex. JC-74.

53. The Details of Responsibilities stated an Executive Director handles all staffing for the organization, including the job to hire, create performance evaluations, set compensation for employees, dismiss, discipline and direct personnel as necessary to carry out board functions. The Executive Directors reports to the Board of Directors. Ex. JC-74.

54. The Details of Responsibilities stated an Executive Director serves as development officer for the organization. Those duties included developing and implementing a fundraising plan. Ex. JC-74

55. The Details of Responsibilities stated an Executive Director serves as the official spokesperson of the organization. Ex. JC-74.

56. On March 28, 2005, Complainant and Respondent Haig as President of RIH USA signed a memorandum of intent ("MOI") as to the employment relationship between Complainant and RIH USA. Ex. JC-75. RIH USA wanted Complainant to revive Organization Headquarters and have Organization Headquarters sign the contract to be Executive Director. Ex. JC-75. In the interim and while waiting for the Organization Headquarters paperwork to be completed, Complainant, individually, would assume the responsibilities in the Details of Responsibilities and be paid \$6,000 per month via invoice. Ex. JC-75. The MOI also expired within three months, i.e. the MOI did not continue beyond **June 28, 2005**. Ex. JC-75.

57. Complainant never revived Organization Headquarters. (Tr. 9/24/13 at 57)

58. After Complainant became Executive Director, Ms. Lenz moved out of the office that they had shared. (Tr. 9/23/13 at 30)

CLAIMANT'S EXECUTIVE DIRECTOR DUTIES WITH RIH USA  
FROM MARCH 28, 2005 THROUGH DECEMBER 29, 2006

59. Respondent Haig was Complainant's direct supervisor. (Tr. 10/17/13 at 13); (*See also*, Tr. 10/17/13 at 48) Respondent Haig micro-managed Complainant's activities, gave her responsibilities, but provided her no authority. (Tr. 9/23/13 at 102).

60. Complainant knew Respondent Haig was president of RIH USA. (Tr. 9/23/13 at 30)
61. Complainant did not report to the BOD. (Tr. 9/23/13 at 38)
62. Complainant knew Ms. Tudor and Mr. Ontai were on the BOD. (Tr. 9/23/13 at 30-31).
63. Complainant refused responsibility for operation of the BOD or calling meetings. (Tr. 10/15/13 at 105)
64. Complainant was never an officer or director of RIH USA. *See*, Ex. JC-6.
65. Complainant did not prepare the annual budget for RIH USA. (Tr. 9/24/13 at 62)
66. Complainant did not handle staffing for RIH USA. She did not hire anyone. (Tr. 9/23/13 at 40) She did not retain attorneys or suppliers. (Tr. 9/23/13 at 40) Complainant was frustrated by her inability to change the rate of pay of an employee who Complainant thought was overpaid. R-98 ("I didn't hire this girl and I would never, never pay her \$75 an hour.") Attorney John Carroll ("Mr. Carroll") was primarily responsible for drafting employment contracts for Complainant and others. (Tr. 10/16/13 at 118-119); *See*, Ex. JC-54a.
67. Complainant refused primary responsibility for raising funds for RIH USA (Tr. 9/24/13 at 240), but she tried to obtain donations. (Tr. 10/15/13 at 110)
68. Mr. Mead believed Complainant was RIH USA's chief compliance officer. (Tr. 10/16/13 at 195)
69. Complainant attempted to implement a handbook for RIH USA, but was unsuccessful. (Tr. 9/23/13 at 108-109)
70. Complainant did not prepare RIH USA's anti-discrimination policy, which was her responsibility. (Tr. 9/24/13 at 44) but *c.f.* (Tr. 10/15/13 at 112)
71. Complainant oversaw RIH USA's website and improved it. (*See*, Tr. 9/23/13 at 48)
72. Complainant described her experience at RIH USA in her resume to RIH USA. Ex. R-6. Respondent Haig had asked Complainant to submit her resume. (Tr. 10/15/13 at 235) but *c.f.* (Tr. 9/24/13 at 22-24) She represented in her resume that she : (1) started as Executive Director in 2004 [sic]; (2) was the "Chief Compliance Officer of the organization;" (3) prepared the "Annual Budget for Board of Directors approval and responsible for husbanding the financial

resources of the organization;" and (4) was, "Responsible for developing and implementing fundraising strategies to shift toward eventual self-sufficiency." Ex. R-6.

COMPLAINANT'S CONTEMPORANEOUS INVOICES  
FROM MARCH 28, 2005 THROUGH DECEMBER 29, 2006

73. Effective March 28, 2005 through December 29, 2006, Complainant provided RIH USA contemporaneous invoices for her services on approximately a weekly basis. Ex. R-29. Complainant described her services rendered "as an independent contractor, as per signed MOI with Detail of Responsibilities attached, in the area of professional Executive Director services." *See*, Ex. R-29.

74. The Detail of Responsibilities described Complainant's initial job duties as Executive Director.

75. Complainant's invoices to RIH USA for the period beginning March 14, 2005 and ending May 20, 2005 all contain the same language, "For services rendered as an independent contractor, as per signed MOI with Detail of Responsibilities attached, in the area of professional Executive Director services." Ex. R-29.

76. In a fax cover sheet dated May 26, 2005 to Ms. Tudor, Complainant stated "Good talking with you this morning. I hope that this new invoicing system will satisfy Christopher [Respondent Haig]" Ex. R-29 (KL2963) (brackets added). Effective for the period beginning May 23, 2005, Complainant began adding a more detailed description of her services rendered along with the general description regarding the Detail of Responsibilities. *See*, Ex. R-29 (KL2963).

77. In an invoice dated November 21, 2005, Complainant stated a portion of her services rendered was, "contacting possible new member for Board of Directors." Ex. R-29 (KL2989).

78. In an invoice dated November 28, 2005, Complainant stated a portion of her services rendered was, "meeting with possible new member for Board of Directors." Ex. R-29 (KL2991).

79. In an invoice dated December 2, 2005, Complainant stated a portion of her services rendered was, "meeting with possible new member for Board of Directors, Jim Tollefson, and Judge Walker Ikeda." Ex. R-29 (KL2993).

80. In an invoice dated December 12, 2005, Complainant stated a portion of her services rendered was, "meeting with possible new member for Board of Directors Professor Cynthia Quinn, Judge Walter Ikeda (2nd meeting),... lunch with Brigadier General Frances Mossman regarding board strategy." Ex. R-29 (KL2996).

81. In an invoice dated May 18, 2006, Complainant stated a portion of her services rendered was, "discovery of 'alternative ad,' conversations with Team members (plus Frances Mossman) regarding necessary changes in new ad, discussion with Brian Ross and his Michael Vesca regarding 'alternative' PacCom Director ad." Ex. R-29 (KL3025).

82. In an invoice dated September 22, 2006, Complainant stated a portion of her services rendered was, "Tuesday meeting with John Carroll regarding additional contract language inserted by CDH into the Jeffrey-Heidi-Kay-Michelle contracts." Ex. R-29 (KL3050). "Kay" is Complainant.

83. In an invoice dated October 6, 2006, Complainant stated a portion of her services rendered was, "while I was out of the office for High Holidays I had several telephone and e-mail contacts with Michelle (concerning her meeting with Christopher) and Jeffrey (concerning his Maritime Museum event and follow-up issues), telephone conversations (2) with John Carroll concerning contracts that did not get signed last Thursday as per expectation." Ex. R-29 (KL3052).

84. In an invoice dated October 23, 2006, Complainant stated a portion of her services rendered was, "telephone call with Heidi in which Heidi got extremely nasty, dealing with continuing staff dysfunctionality." Ex. R-29 (KL3054).

85. In an invoice dated October 28, 2006, Complainant stated a portion of her services rendered was, "discussion with Frances Mossman regarding new Board members and Executive Committee members." Ex. R-29 (KL3057).

86. In an invoice dated November 24, 2006, Complainant stated a portion of her services rendered was, "meeting with John Carroll regarding our continued lack of compliancy and the legal problems of Christopher's continued libelous e-mails." Ex. R-29 (KL3060).

87. In an invoice dated December 1, 2006, Complainant stated a portion of her services rendered was,

luncheon meeting with Daniel Jarrett regarding errors discovered within the lease,

negotiated additional build-out in library space as well as fixing lighting fixtures, meeting with John Carroll to get new language on negotiated paragraphs within the lease, transference of this new language to Grubb & Ellis for incorporation into revised document.

Ex. R-29 (KL3061).

88. In an invoice dated December 26, 2006 for the pay period beginning **December 18, 2006 and ending December 22, 2006**, Complainant stated a portion of her services rendered was:

trip to Snelling offices regarding staff concerns about upcoming "mandatory meeting," assisting staff with rescheduling so that they could attend the "mandatory meeting," ... attendance at the "mandatory meeting" at Snelling, discussions with staff regarding information gathered at Snelling, multiple meetings with attorneys regarding legality of Snelling's refusal to allow the staff to take contracts and employee handbook to their attorneys for legal advice.

Ex. R-29 (KL3065).

89. In an invoice dated December 29, 2006, Complainant stated a portion of her services rendered was, "meeting with Kanani Iaea regarding liability issues." Ex. R-29 (KL3066).

#### THE REORGANIZATION OF RIH USA

90. RIH USA operated like no other business and had no clear direction. (Tr. 10/16/13 at 69-70)

91. Because of insufficient revenue since 2000, RIH USA was not in compliance with the 501(c)(3) requirements and its continuing status under 501(c)(3) was in jeopardy. (Tr. 9/23/13 at 43) RIH USA's 501(c)(3) status was subject to re-determination after five years. (Tr. 10/16/13 at 105-106)

92. Complainant was retained as Executive Director of RIH USA, in part, because of her fund-raising abilities. (Tr. 10/21/13 at 27-29). RIH USA desired the qualifications represented by Complainant. (Tr. 10/21/13 at 29)

93. Complainant continuously worked on approval for employment contracts, including for herself, since May 2005 and until her separation. (Tr. 9/23/13 at 45-46)

94. Complainant provided a list of the RIH USA personnel, positions and pay scales to Ms. Iaea that Ms. Iaea had requested. Ex. JC-116 and (Tr. 10/15/13 at 6) Michelle Bowerman

and Kathleen Larsen were not listed because they had not yet been hired by RIH USA. Ex. JC-116.

*THE NOVEMBER 2005 ADVICE FROM MS. TUDOR*

95. On November 8, 2005, Ms. Tudor sent Ms. Lenz an email confirming their phone conversation regarding the costs of converting "from an independent contractor to an employee," with respect to RIH USA. Ex. JC -21. Ms. Tudor noted that an individual might not be considered an employee under the IRS rules, but that same individual would most likely subject RIH USA to liability for Hawaii unemployment tax. *See*, Ex. JC-21.

96. Contemporaneous with the November 8, 2005 email and phone conversation with Ms. Lenz, Ms. Tudor advised Respondent Haig and prepared him a package for his review. (Tr. 10/16/13 at 105-106) Ms. Tudor subsequently advised Respondent Haig again. (*See*, Tr. 10/16/13 at 116) and Ex. JC-54a.

*THE JEFF MEAD WORKER ORDER EMAILS*

97. On January 26, 2006, Ms. Lenz sent Complainant an email about the work order program which included Mr. Mead. Ex. JC-27a. Ms. Lenz also reminded Complainant that the information was also available on the RIH USA server. Ex. JC-27a.

98. On March 7, 2006, Respondent Haig sent Ms. Lenz an email criticizing Mr. Mead for not following the work order process when allegedly billing RIH USA over \$1,700 to research "lyceums." Referring to Mr. Mead, Respondent Haig stated,

Jeffrey appears to be taking unfair advantage by monopolizing entrapment in profiting from a non profit research organization. These instances, are evidence of his probable bad faith false, misrepresentation of normative procedures of work orders, for required for Rihi.USA researchers.

Ex. R-63 (paragraph breaks omitted). Respondent Haig also criticized Complainant for failing to follow the "work order" procedures set up by Ms. Lenz. Ex. R-63.

99. Mr. Mead is not Jewish. (Tr. 10/16/13 at 228)

100. On April 4, 2006, Respondent Haig sent Mr. Mead an email criticizing Complainant for not properly managing Mr. Mead. Ex. R-70. (Tr. 10/16/13 at 235-236) Respondent Haig also stated, among other things, "[Complainant] was paid \$6,000/month for her work, despite her possibly negligent malpractice as an executive director. It is timely to continue

to safely evaluate those policies she [Complainant] has instituted. Ex. R-70 (brackets added).

*THE EXECUTIVE DIRECTOR DESCRIPTION*

101. On April 5, 2006, Ms. Lenz sent Respondent Haig a revised draft of the description for the Executive Director of RIH USA. Ex. JC-33. The draft stated the qualifications and responsibilities for the position. Ex. JC-33. Respondent Haig intended to send the draft to Andresen Blom, aka "Andy," ("Mr. Blom") who had been retained as a consultant for review. (See, Tr. 12/3/13 at 24-25 and 96-97)

*THE SEPTEMBER 26, 2006 EMAIL*

102. On September 26, 2006, Complainant emailed Frances Mossman ("General Mossman") with the subject "I need your guidance." Ex. R-98.

103. Complainant began the email with, "I have a problem that I don't know how to handle. In any other place but RIHI.USA this situation would present no difficulty whatsoever. **But, as you know, RIHI.USA is like no other place of business.**" Ex. R-98 (bold added). Complainant needed advice about the pay of her subordinate. Ex. R-98.

104. In the email, Complainant stated, "Christopher hired Kathleen while standing in the checkout line at Comp USA. I want to make it clear that I enjoy Kathleen very much.... But under the current circumstances, she is underperforming and wildly overpaid." Ex. R-98.

105. In the email, Complainant stated, "Now he [Respondent Haig] has told Kathleen that he is transferring [sic] the approval of her invoices to me. No good can come from this." Ex. R-98.

106. In the email, Complainant stated,

Part of my job as Executive Director includes the handling of RIHI.USA money in a responsible and reasonable manner. I am looking at these bills and I know that they are not kosher. I also know that she is desperate for the money. I have to share an office with her and no matter what happens, I am going to end up the bad guy in a situation over which I have no control.

Ex. R-98.

107. In the email, Complainant stated,

I didn't hire this girl and I would never, never pay her \$75 an hour. But Christopher has started some very bad precedents lately (paying people one month in advance for work they have not done; overpaying for work without any

accountability; giving the same task to more than one person without notification; "virtual" offices where no one is accountable to anyone for anything) and now I am being faced with the responsibility of cleaning up a mess that I didn't make. And I resent it.

I need guidance. I know how to run an office and handle a staff, but I can't be held responsible for a budget over which I have no control.

Ex. R-98.

*THE ATTEMPTED EMPLOYMENT CONTRACTS*

108. Other than Complainant's invoices dated September 22, 2006 and October 6, 2006, Complainant did not reference her working on any employment contracts as part of her duties performed. Ex. R-29, *See also*, Ex. R-29 (KL3050) and Ex. R-29 (KL3052).

109. On or about October 5, 2006, Complainant submitted an employment contract to Respondent Haig which he later rejected. Ex. R-99 and (Tr. 9/24/13 at 46)

*THE NOVEMBER 2006 ADVICE FROM MS. TUDOR*

110. On November 19, 2006, Ms. Tudor advised Respondent Haig in an email about the potential payroll tax problems of discharging employees as suggested by "Michelle." *See*, Ex. JC-54a. Ms. Tudor suggested Michelle's idea to replace several employees -- who had been working there for more than one year each -- with herself, was self-serving especially since those employees presumably worked. *See*, Ex. JC-54a.

111. On November 20, 2006, Respondent Haig responded via email. Ex. JC-54a. Respondent Haig stated he has been waiting for John Carroll, who was working with Complainant, to complete the employment contracts. Ex. JC-54a. Respondent Haig also stated Complainant "has severe conflict of interests in designing contracts to serve herself for the next two years, without any reference to the professional requirements of the job, which has been specifically set with MA or PHD [sic] in US History and or Public Policy." Ex. JC-54a.

112. Ms. Tudor responded in pertinent part,

Although I can understand why you would want to have the employment contracts completed, it is not absolutely necessary to have employment contracts to convert your staff to be employees. Most companies have an employee handbook and do not have employment contracts.

Ex. JC-54a.

113. Ms. Tudor also discussed the conversion of independent contractors to employees with Ms. Lenz, but not with Complainant. (Tr. 10/16/13 at 122-123)

114. On November 30, 2006, Complainant printed out a copy of Ex. JC-54a which is the emails dated November 19 and 20, 2016. (Tr. 9/24/13 at 235)

*THE DECEMBER 2006 RIH USA REORGANIZATION MEETINGS*

115. In December 2006, meetings regarding reorganization of RIH USA were attended by Respondent Haig, Mr. Blom, Ms Iaea, Ms. Lenz and Ted Riecker. Ex. R-126. The meetings were characterized as "executive level." Ex. R-126. Complainant was not included in the reorganization meetings. (Tr. 12/3/13 at 84)

116. In or about December 2006, Ms. Iaea prepared a staffing proposal for RIH USA. Ex. R-117.

117. RIH USA retained Snelling for reorganization because Complainant did not put RIH USA in compliance as envisioned in the MOI. (Tr. 10/21/13 at 89)

*THE MANDATORY MEETING AT THE  
SNELLING OFFICE ON DECEMBER 21, 2006*

118. On or about December 18, 2006, the staff at RIH USA, including Complainant, received emails regarding a mandatory meeting at the Snelling office. Complainant immediately visited the Snelling office. (Tr. 9/23/13 at 134-135) Complainant was informed that she needed to wait for the meeting.

119. On or about December 21, 2006, Complainant attended the mandatory meeting at the Snelling office along with Mr. Mead, Ms. Bowerman, and Ms. Lenz. (Tr. 9/23/13 at 135-136) Ms. Iaea conducted the meeting and Respondent Haig was not present.

120. Ms. Iaea provided a document to Complainant and others in attendance summarizing the partnership between RIH USA and Snelling and the effects on the staff of RIH USA. Ex. R-15, (Tr. 10/22/13 at 29) In essence, the staff of RIH USA, including Complainant would no longer be considered independent contractors for RIH USA and Snelling would handle all payroll and human resources functions that typical employees would expect since Snelling would be the employer. *See*, Ex. R-15. Ms. Iaea explained that they could continue working for RIH USA through Snelling, but they would need to apply to Snelling. Otherwise, their relationship with RIH USA would end. Ex. R-15. Ms. Iaea also provided other documents.

121. Complainant had not known of the reorganization of RIH USA through Snelling prior to the mandatory meeting on or about December 21, 2006. (Tr. 9/23/13 at 134-135)

122. Complainant was upset and refused to apply that day. (Tr. 10/16/13 at 135) She wanted to show the paperwork provided by Ms. Iaea to an attorney before signing, but Ms. Iaea prohibited removal of any of the documents.

123. Ms. Iaea promised another meeting in which an attorney could be brought to examine the documents. (Tr. 9/23/13 at 142)

124. After the mandatory meeting, Complainant consulted an attorney. (Tr. 9/24/13 at 137) Complainant also told Ms. Tudor that she felt railroaded and most of them decided not to apply to Snelling. (Tr. 10/16/13 at 123)

*SEPARATION FROM RIH USA AND OPEN OFFER FROM SNELLING*

125. On or about December 30, 2006, Ms. Iaea sent letters to Complainant and others informing them of their separation from RIH USA effective January 3, 2007. Exs. JC-77, R-122, R-123 and R-124. 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." Exs. JC-77, R-122, R-123 and R-124. Complainant received the letter.

126. On December 31, 2006, Ms. Lenz emailed a report regarding the reorganization of RIH USA to Respondent Haig and CC'd Ted Reicker ("Mr. Reicker"), Ms Iaea, and Mr. Blom. Ex. R-126.

127. As of January 3, 2007, only Ms. Lenz had applied to work at RIH USA through Snelling.

128. On January 3, 2007, Ms. Iaea sent an email to former staff of RIH USA, including Complainant asking them to send her a status report of their work. Ex. JC-65. The email also included an incomplete sentence and informed them not to represent RIH USA in any form. Ex. JC-65.

129. Ms. Iaea signed her January 3, 2007 email with, "Representing Christopher Haig, President of Research Institute for Hawaii.USA." Ex. JC-65.

130. Complainant replied to Ms. Iaea's January 3, 2007 email and noted it contained an incomplete sentence. *See*, Ex. R-7 Complainant's reply stated, among other things,

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. This also does not strike me as the way I would expect Mr. Reicker to treat people. He has always, in my view, been a kind and sensitive man whose opinion I have always valued.

\* \* \* \*

**I am assuming that you are not planning to fire everyone permanently;** that would be a waste of valuable human resources.

\* \* \* \*

Be assured that I will be complying with your instructions not to represent my self [sic] as associated with Researching Institute for Hawaii.USA as of today, unless I am reinstated at some point in the future.

\* \* \* \*

Ex. R-7 (bold added); *See also*, Ex. R-130.

131. During the first week of January 2007, Respondent Haig offered Mr. Blum the position of President of RIH USA which he accepted. Respondent Haig had decided to take on an "emeritus" role with RIH USA. (Tr. 12/3/13 at 35-36)

132. On January 15, 2007, Ms. Iaea emailed Complainant and others regarding the status reports. Ex. R-137. Ms. Iaea also stated, "During this reorganization period for Research Institute for Hawaii.USA, 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." Ex. R-137

133. Ms Iaea signed her January 15, 2007 email with, "Representing Andy Blom, Acting President of Research Institute of Hawaii.USA." Ex. R-137.

134. Mr. Mead never applied to Snelling to work for RIH USA. (Tr. 10/16/13 at 203-204)

135. After July 2004, Complainant never applied to Snelling to work for RIH USA. (Tr. 9/24/13 at 129)

136. Complainant applied for unemployment insurance benefits and received unemployment insurance benefits. (Tr. 9/23/13 at 150-151) Complainant was a nonprofit executive director, knew the law, and knew she was not an independent contractor. (Tr. 9/23/13 at 150)

137. The IRS determined on October 20, 2010 that Complainant was an employee of RIH USA. Ex. JC-146.

**THE INCIDENTS CONCURRENT WITH THE  
COMPLAINANT'S INVOICES AND REORGANIZATION OF RIH USA**

*THE SYNAGOGUE REMARK*

138. In or about April or May 2005, Complainant referenced her attendance to a synagogue in a conversation with Respondent Haig. Respondent Haig consequently turned and walked out. (Tr. 9/23/13 at 51-52)

*THE FEET SHUFFLING INCIDENT*

139. On an unspecified date a "few weeks" after the synagogue remark, Respondent Haig made a comment to Complainant about her shuffling her feet. (Tr. 9/23/13 at 51-52) At the time, Complainant thought Respondent Haig was making a joke, but she later told Ms. Lenz and then went home. Complainant did not ask Respondent Haig about his comment about the shuffling feet. (Tr. 9/23/13 at 51-53)

*THE "HEBREW TEACHER" INCIDENT*

140. On an unspecified date a "few weeks" after Respondent Haig discussed Complainant's feet shuffling with her, Respondent Haig implied to Complainant that "Jew" was pejorative and to use "Hebrew" instead. (Tr. 9/23/13 at 53-54) Respondent Haig had said something to the effect of, "We don't use words like that." Respondent Haig had clarified his use of "Hebrew teacher" when referencing his former teacher who was Jewish after Complainant had originally thought Respondent Haig had taken a Hebrew class.

141. Complainant does not know when she heard Respondent Haig first use the term "Hebrew" in place of "Jew."

*THE ABSENCE OF WITNESSES*

142. There were no witnesses to discriminatory incidents because Respondent Haig

only made discriminatory verbal statements when they were alone. (Tr. 9/24/13 at 89-90)

143. Respondent Haig once took her aside to tell her to stop with her Hebrew feet because it crushes Kathleen Pavelko's good Christian words and it was not Complainant's fault; it was genetic. (Tr. 9/23/13 at 90-91).

*THE SECOND HWLF FUNDRAISING EVENT  
ATTENDED BY RESPONDENT HAIG*

144. On or about October 22, 2005, Respondent Haig attended the HWLF fundraising event in which Complainant participated. (See, Tr. 9/24/13 at 78) Complainant had not chosen the Halloween theme of the event. (Tr. 9/24/13 at 78)

145. Respondent Haig informed Complainant the HWLF fundraising event was a violation of state and federal law and a deceptive and fraudulent practice. (Tr. 9/24/13 at 78)

146. On October 23, 2005, Respondent Haig sent Ms. Lenz a document via email entitled "Research on negative impacts from the HLWF event.doc." Ex. R-37. Within the body of the email, Respondent Haig stated,

Preliminary draft for possible confidential social science researchWith [sic] respect for the US Constitutionally protected equal rights of safety of all [sic] US citizens, corporations, persons, educational institutions, and equalrights [sic] of due processes of US Constitutional law, and US constitutionalrights [sic] for investigation, which have been obstructed and denied bycorruptions [sic] by suspects, in violation of US Federal Laws and StateStatutory [sic] laws, described herein.Safer, [sic] more diligent enforceable US Federal legal actions appear to benecessary [sic] with respect for safer rights of US Constitutional policies ofsubstantive [sic] review of procedural due process with respect for all relevantUS [sic] laws."

Ex. R-37.

147. Respondent Haig believes Halloween is unsafe and Complainant disrespected the judiciary and the dignity of dress. (Tr. 10/21/13 at 33-37)

*THE NOVEMBER 11, 2005 EMAIL*

148. On November 11, 2005, Respondent Haig sent an email to Ms. Lenz. Ex. JC-22a. Respondent Haig stated, among other things, "(There was some tension between the Greek Classics Professor of Art andArchitecture, [sic] vs. the Prof. Littman **who like Kay, was taking all of theChristian [sic] intelligence, and taking all critics by standing on them.**So, [sic] it

was a rather oppressive effect upon the young audience.)" Respondent Haig was describing a presentation he had attended. Ex. JC-22a (bold added).

*THE MARCH 20, 2006 EMAIL*

149. On March 20, 2006, Respondent Haig sent a draft of a memo via email to Pam Green for revision. Ex. JC-30. Respondent Haig's assistants typically "revised" his memos by correcting the grammar. (See, Tr. 10/17/13 at 91) Respondent Haig began his draft with language similar to the Safety Language:

With respect for the safety and protections of all US citizens, corporations, educational institutions, persons, and with respect for equal rights of due process under US Constitutional law, these statements have been made to protect my US constitutional [sic] rights of my US citizen duties for ensuring US strategic audits, US legal compliant audits, and US Constitutional compliance in procedural due process.

Ex. JC-30 (brackets added). Respondent Haig questioned whether Complainant was taking advantage of RIH USA and "US policies." Ex. JC-30. Respondent Haig faulted Complainant for her lack of fund raising for RIH USA. Ex. JC-30. Respondent Haig stated Complainant had "ulterior foreign powered Israeli Zionist... 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." Ex. JC-30. Respondent Haig defined "Israeli Zionist" as Heil Israel neo-nazism. Ex. JC-30. Respondent Haig stated Complainant used "advanced spiritual warfare foot shuffles" by using her back left foot to diminish those wealthy foundations. Ex. JC-30. Respondent Haig stated Complainant took "all their intelligence to her Hebrew people, associated with Israel." Ex. JC-30. Respondent Haig stated Complainant projected "Heil Israel" from her home office. Ex. JC.30. Respondent Haig made additional similar repetitive comments faulting her for other matters. Ex. JC-30. Respondent Haig ended his draft with language similar to the Safety Language. Ex. JC-30.

*THE APRIL 7, 2006 EMAIL*

150. On a date unknown, Respondent Haig stated in an email, among other things:  
Give credit to Moses for the flooding! Remind people of Moses parting the water and then letting the flooding descend upon the following non-Hebrews.

Ex. JC-34. Respondent Haig asked Mr. Mead his thoughts on the matter referenced in the email

and closed with language similar to his Safety Language. Mr. Mead forwarded the email to claimant on April 7, 2006 with the subject "Some nifty utterances from CDH about the parting of waters and why we should be thankful to Moses..." Ex. JC-34 (ellipsis in original). Mr. Mead stated, "I think you might find this very entertaining! Remember, Moses was Jewish and I'm all in favor of giving credit where credit is due when it comes to parting waters. (eyes rolling...)" Ex. JC-34.

151. Mr. Mead forwarded the email to Complainant in order to mock Respondent Haig. (Tr. 10/16/13 at 239-241)

*THE APRIL 8, 2006 EMAIL*

152. On April 8, 2006, Respondent Haig sent an email to Mr. Mead and Ms. Lenz regarding Complainant. Ex. JC-35a<sup>3</sup>. Respondent Haig began the email with language similar to, but not exactly the same as the Safety Language. Ex. JC-35a. Respondent Haig then referred to claimant as having "foreign powered, subliminally tyrannical monopolizing powers" and "bad faith subversive interpretations." Ex. JC-35a. Respondent Haig stated Complainant, "uses a malicious foot stomp down on everything else not Hebrew." Ex. JC-35a (punctuation redacted). Respondent Haig referred to "Hebrew SS policies which have been active for many years as foreign colonial aggressive subliminally malicious powers disrupting and targeting US citizens." Ex. JC-35a.

153. Respondent Haig sent the April 8, 2006 email to Mr. Mead, but Mr. Mead was not certain if he had forwarded it to Complainant. (Tr. 10/16/13 at 211)

*THE AMERICAN EAGLE ADVERTISEMENT*

154. On an unspecified date, Respondent Haig talked to Complainant about the advertisement in her office with the American eagle, which advertisement was created by Kathleen Larsen. (Tr. 9/23/13 at 116); *See also*, Ex. JC-76 dated 12/21/2006. Respondent Haig told Complainant that he knew she did not like the advertisement because of the eagle since Hebrews do not like eagles considering that the beak looks like a Jewish nose. (Tr. 9/23/13 at 116)

*THE EMAIL EXCHANGE BEGINNING MAY 1, 2006 REGARDING BRIAN ROSS*

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<sup>3</sup> Ex. JC-45 is a duplicate of Ex. JC-35a

155. On May 1, 2006, Brian Ross ("Mr. Ross"), who is Jewish, responded to an email from Respondent Haig regarding an advertisement Mr. Ross worked on with Complainant. Ex. JC-37a. Mr. Ross responded to Respondent Haig's concerns about "America" and "America Supports You." Ex. JC-37a. Mr. Ross also CC'd Complainant. Ex. JC-37a.

156. Respondent Haig responded to Mr. Ross by stating, among other things, There are several corporation like "American Carpets" on Sand Island Access Road, which the commonly familiar reference to American rugs, could diminish the marketing experience of those reading the Military ad, if the many customers of American Carpets, were used to shuffling America under their feet of American Carpets.

Ex. JC-37a

157. Mr. Ross forwarded Respondent Haig's response to Complainant to ask her about her thoughts. Ex. JC-37a.

158. On May 9, 2006 at 9:33 AM, Complainant sent an email to someone about the advertisement. See, Ex. JC-38a.

159. On May 9, 2006 at 9:49 PM, Respondent Haig responded to Complainant's May 9, 2006 at 9:33 AM email to someone. See, Ex. JC-38a. Respondent Haig stated, among other things,

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 she has reactively, and at times, maliciously threatened me "I was dead wrong on US IP" 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 damage upon unsuspecting US professionals in the many fund raisers she has defiantly promoted with Hawaii Women Legal Foundation. Putting UH professors in drag, was an intentionally disruptive, malicious false entrapment policy which she has continued for several years.

Ex. JC-38a. Respondent Haig faulted Mr. Ross for being Canadian. Respondent Haig did not reference Complainant's religion in the May 9, 2006 email. See, Ex. JC-38a.

160. On May 9, 2006 at 11:14 PM, Mr. Mead forwarded Respondent Haig's May 9, 2006 response to General Mossman and Mr. Carroll. Ex. JC-38a. Mr. Mead stated in his email

response, among other things, "I have not forwarded this to Kay." Ex. JC-38a *c.f.* (Tr. 10/16/13 at 195) (Mr. Mead: "As the executive director, her role is also to be a chief compliance officer.")

*THE MAY 13, 2006 SYMPHONY BALL*

161. On Thursday, May 11, 2006 at 3:42 PM, Complainant emailed Respondent Haig and stated,

It has come to my attention that Kerry, Heidi and Jeffrey will be attending the Symphony Ball this Saturday as your guests. It sounds like great fun, and if you find that you have an extra place at your table, please be sure to let me know as I would love to be included.

Ex. JC-39.

162. On Friday, May 12, 2006, Respondent told Complainant she was not invited because he did not want to interfere with her Sabbath.

163. Respondent Haig acknowledges the Sabbath was not the reason he did not invite Complainant to the Symphony Ball (Tr. 10/21/13 at 53-54)

164. On May 13, 2006, Complainant attended the Symphony Ball, but not as a guest of Respondent Haig or RIH USA. Complainant complained to Mr. Reicker who said he would look into it. (Tr. 9/23/13 at 105-106)

*THE DISCOVERY OF THE MARCH 20, 2006 EMAIL*

165. In or about **May or June 2006**, Complainant and Michelle Bowerman ("Ms. Bowerman") found and read the March 20, 2006 email while searching for something in the office of Ms. Lenz. (Tr. 10/17/13 at 43, 54-56, and 71-72)

166. Complainant was upset and informed Ms. Lenz on the following Monday. Ms. Lenz told her that Respondent Haig was being Respondent Haig. (Tr. 9/23/13 at 70) It was unclear if Ms. Lenz asked Complainant the reason for her reading the email on the desk of Ms. Lenz.

167. Complainant made a copy of the March 20, 2006 email. (Tr. 9/23/13 at 71) She later put the March 20, 2006 email in a drawer and tried to forget about it. (Tr. 9/23/13 at 74)

168. There was no evidence Complainant filed a claim for any work related injuries pursuant to Haw. Rev. Stat. Chapter 386 for Workers' Compensation benefits.

*THE AUGUST 8, 2006 EMAIL*

169. On August 8, 2006, Respondent Haig stated in an email of the same date, among other things:

KBL [Complainant] 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.

Ex. JC-44. Mr. Mead forwarded the email to claimant with the subject "Our Fearless Leader opines...Statehood Day at Iolani Palace..." Ex. JC-44 (ellipses in original). Mr. Mead stated, "Oh Lordy.... I think it's time for some line-dancing..." Ex. JC-44.

170. Mr. Mead forwarded the email to Complainant in order to mock Respondent Haig. (Tr. 10/16/13 at 239-241)

*THE FIRST AUGUST 31, 2006 EMAIL*

171. On August 31, 2006, Respondent Haig emailed Mr. Mead about Complainant. Ex. JC-47. Mr. Mead forwarded the email to Complainant on September 1, 2006 with the subject, "Funny Musings from the Fearless One." Ex. JC-47. Mr. Mead stated:

Oh Lordy! You **MUST** stop disrupting our civilization with your unsafe, preambular foot shuffling! LOL! This upstages the National Enquirer.

Please put away your vacuum cleaner! If this keeps up there will be no more intelligences to be sucked up! LOL!

Happy Tissue Box,

Jeffrey

Ex. JC-47. Complainant was very upset after receiving Mr. Mead's email forwarding Respondent Haig's email because, among other things, Respondent Haig blamed Complainant for the death of her son. Complainant cried that night.

172. Mr. Mead forwarded the email to Complainant in order to mock Respondent Haig. (Tr. 10/16/13 at 239-241)

173. The underlying email from Respondent Haig linked certain events, such as various accidents to Complainant's "stirring herself above any criticism while shuffling unsafe

below her foot." Ex. JC-47. One of the events was Complainant's son's motorcycle accident which he blamed her for. Ex. JC-47. Respondent Haig further stated, "She appears to be using popular Heil Israel functions of stirring unsafe accidents until they are brought into submission to their foreign colonial religious powers!" Respondent Haig also stated in his email that the correlation between Complainant's alleged extreme anxiety with the traffic accident of two of his "blond friends" showed Complainant was the cause. Ex. JC-47. Respondent Haig therefore questioned Complainant's "safety" towards others. Ex. JC-47.

*RESPONDENT HAIG'S PROHIBITION OF COMPLAINANT  
FROM USING HIS PERSONAL CAR LOANED TO MR. MEAD*

174. On an unspecified date, Respondent Haig loaned his personal car to Mr. Mead for Mr. Mead's personal use. However, Respondent Haig specifically prohibited Mr. Mead from allowing Complainant to ride in his car because she was Jewish. (Tr. 10/16/13 at 153-154)

175. Complainant knew about Respondent Haig's restriction from using his car and disregarded it by riding in Respondent Haig's car. She did not ask Respondent Haig if she could use his car. (Tr. 9/24/13 at 94)

*THE SECOND AUGUST 31, 2006 EMAIL*

176. Also on August 31, 2006, Respondent Haig subsequently emailed Mr. Mead about Complainant. Exs. JC-48a and R-97. Mr. Mead forwarded the subsequent email to Complainant also on September 1, 2006 with the subject "More Incredible Musings from our Fearless One...". Ex. JC-48a and R-97. Mr. Mead stated:

Not sure who is [sic] source is on "I understand that last Friday, Kay denied a request from Deanna, to send me for my review a draft of the Conference invitation." How not true!!! As I have said, this business with Deanna is too contrived to be taken as coincidental...I think it was deliberate.

Jeffrey

Ex. JC-48a and R-97 (ellipsis in original). Respondent Haig, in his email, had referred to Complainant's shuffling foot functions and "her Hebrew people" forcing extractive larceny against US intelligent experiential intellectual property rights, among other things. Ex. JC-48a. and R-97

*THE OCTOBER 12, 2006 EMAIL*

177. On October 12, 2006, Respondent Haig directly emailed Complainant with the subject "concerns." Ex. JC-50. In addition to his usual concerns of patriotism, safety, and the US Constitution, Respondent Haig stated:

Yet, amidst, this 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.

Ex. JC-50a

178. Complainant did not respond to Respondent Haig. (Tr. 9/23/13 at 78-79)

*THE NOVEMBER 20, 2006 EMAIL*

179. On November 20, 2006 at 9:47 AM, Respondent Haig directly emailed Complainant a different email with the subject "concerns." Ex. JC-56a. In addition to his usual concerns of patriotism, safety, and the US Constitution, Respondent Haig stated:

My professional Graduate training is my professional expertise is my US Intellectual property rights protected by US Constitutional protections.

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 patters of your unfair, unsafe, covert forced extractive taking of my US professional experience and expertise in GIS research.

There are many courses available teaching these GIS systems at HPU and UH.

Also, I am available to consult on these GIS policies.

Ex. JC-56a

180. On November 20, 2006 at 11:32 AM, Complainant forwarded Respondent Haig's email to General Mossman and CC'd Mr. Bate and Mr. Carroll. Ex. JC-57. Complainant stated, among other things, 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 she 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." Ex. JC-57.

181. Mr. Carroll replied the next day, "To All!!!! ood [sic] Grief!!!! jc." Ex. JC-57.

182. Complainant replied to Mr. Carroll, General Mossman, and CC'd Mr. Bate. Complainant stated, among other things, "What makes this man treat me so contemptibly ? **It is a mystery.** Oh well." Ex. JC-57 (bold added).

*THE NOVEMBER 22, 2006 EMAIL*

183. On November 22, 2006, Respondent Haig sent, via email, a report regarding Complainant to multiple recipients, including, but not limited to Mr. Blom, General Mossman, Ms. Tudor and Ms. Lenz. Ex. JC-59. Respondent Haig stated, among other things, "With respect for Kay's work on some of these concerns, I am concerned that there are misleading errors of omissions, which evade recognition of her duties previously requested sometime ago." Ex. JC-59. The attachment was entitled "November 2006 Report[1].doc."

*THE NOVEMBER 23, 2006 EMAIL*

184. On November 23, 2006, Respondent Haig sent an email complaining about Complainant to someone. Ex. JC-60a. Respondent Haig faulted Complainant for, among other things, not filling out "the board," failing to report to board members, and not doing any fund raising from June 2005 to May 2006 when Kathleen Larson was hired for that purpose. Ex. JC-60a. Respondent Haig also stated, "Instead, KBL tended to maliciously diminish professional American Hawaiian Intelligence under the wheels of her 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 50th State of the USA!" Ex. JC-60a.

185. Complainant received the November 23, 2006 email from Ms. Tudor, but did not know when. (Tr. 9/24/13 at 240) Complainant and Ms. Tudor discussed the email. (Tr. 9/24/13 at 240)

186. On November 23, 2006 at 10:59 AM, Michele Van Hessen replied to Respondent Haig and referred to, among other things, leases for RIH USA. Ex. JC-60a

*THE DECEMBER 21, 2006 REPORT*

187. In a report dated December 21, 2006, 10:00 PM, Respondent Haig referenced a

"blond young man" who was shirtless and the apparent victim of a violent attack. Ex. JC-76.

Respondent Haig stated, among other things,

From my evaluation of the unsafe spiritual causes, I could evaluate that in addition to the proximate malice by some malicious gang, I could also detect that he had been using "Heil Hitler" tendencies.

I could detect that he had been additionally victimized by a powerful covert foreign Israeli colonizing malicious function in the area, instigating his victimization!. [sic]

Some Israeli power had been using instigational powers with a kick down function to make unsafe social fields around him, with a variation on wicked worse" [sic]

This whole area around Ward Warehouse and Ward Center has been targeted by Kay Lorraine, her husband Brad Bates and their pro-Israeli family forcibly extracting the experience from the Ward Center Theaters, to falsely sustain their professional film review experiential interests.

\* \* \* \*

Previous reports have provided multi-causal factors in Israeli powers maliciously setting up the unsafe conditions for the tragic death of John F. Kennedy and later John F. Kennedy, Jr. Both of whom were tending toward Heil Hitler functions.

\* \* \* \*

Previous reports have documents the powers of Israeli malicious instigation to pull away safety factors so that unsafe conditions remain.

There are extensive persistent patterns of evidence that they have been maliciously disrupting the safety of many people in the area, if there is evidence of persistence divergence from their Israeli.

What are social psychological stressor factors in Honolulu, Hawaii which have been observed and reported?

In recent days, I could also evaluate KBL [Complainant] and BB [Mr. Bate], who use covert foreign malicious colonizing powers of "Heil Israel" powers, continuing for forcibly extract my US professional experience. I could detect their intent was to falsely claim they needed to know what my interests were for this next year!

They have forcibly raped and extracted my US film professional experiences, my GIS experience, and my professional MBA level of management experience for over a year!

In her KBL office she constantly looks at the "American Eagle" on the US

Military ad. She maliciously subliminally extracts with take critical concern, and maliciously takes all intelligent experience from any of the powers associated with that Eagle, including CIA, and NSA which use the same US Eagle!!

KBL and BB, who use covert foreign malicious colonizing powers, of "Heil Israel" should have been fired<sup>4</sup> for their unsafe policies and unethical unsafe practices and yet, they are continuing to victimize professionals and many different policies for our Research Institutes for Hawaii.USA.

I have continually recommended that any use of foreign "Heil functions" are both non compliant and unsafe, yet there appear to be persistent patterns of risks created.

Unite [sic] Kathleen Larson was hired in June 2006, KBL had deviantly denied responsibility for her failures in not doing any fund raisers, which she hired foreign bad faith ad experts from her local synagogue to maliciously radically disrupt the confidence of of [sic] the staff, into false submission to their powers.

On days for KBL's invoices to be approved, she would purposely with prurient intent of deceptive seductive entrapment, then wear no bra, to attempt to diminish any responsible concerns for her persistent management and false entrapment by extracting the professional intelligence from our US professionals!!

I have in good faith switched to Snelling employment management; from KBL's deceptive bad faith false psychological entrapment policies of self serving monopolizing while there have been available many responsible improvements for professional US legal compliant employment management which KBL has denied, despite recommendations for US State and Federal compliance.

I have made extensive reports on the risks to lawyers.

Yet many continue to naively empower KBL and BB who are conning people into allowing them to endanger US national security CIA and NSA policies!

Ex. JC-76 (the "December 21, 2006 report") (brackets, underline, and footnote added).

188. Respondent Haig admitted to sending claimant a BCC of an email at least once. (Tr. 10/21/13 at 196) Complainant received the December 21, 2006 via BCC from Respondent Haig on or about December 21, 2006. (Tr. 9/23/13 at 126-127)

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<sup>4</sup> There was no evidence Mr. Bate ever worked for RIH USA or Respondent Haig.

*AT THE END OF 2006, COMPLAINANT LEARNED OF  
RESPONDENT HAIG'S BELIEF AS TO THE REASON  
SHE DID NOT WEAR A BRA*

189. After receiving the December 21, 2006 report, at the end of 2006, sometime after December 21, 2006, Complainant told Mr. Mead that it felt as if Respondent Haig was looking at her breasts. (Tr. 9/23/13 at 80) *See also*, Ex. JC-76. Mr. Mead replied that Ms. Lenz had been "going around the office" and had told Mr. Mead that Complainant did not wear a bra. (Tr. 9/23/13 at 80)

190. Complainant had stopped wearing a bra when she was a teenager. (Tr. 9/23/13 at 59)

191. Complainant customarily wore her clothing at the RIH USA worksite such that it was impossible to tell that she was not wearing a bra.

192. Complainant wore clothing during a period in the summer of 2004 such that someone present at the RIH USA worksite could tell she was not wearing a bra. (Tr. 9/23/13 at 79-80)

193. Complainant never asked Respondent Haig if he was staring at her breasts. (Tr. 9/24/13 at 114)

*THE DECEMBER 26, 2006 EMAIL*

194. On December 26, 2006, Respondent Haig sent an email to Ms Lenz regarding Complainant reacting to music from Respondent Haig's phone. JC-62a. Respondent Haig stated, among other things, "When Kay called me, she listened to the music and then Kay falsely concluded that it was a Nazi music that she could forcibly extract for her use. She has continued to rob me of my professional experience, and endanger my and others professionals lives by her unsafe powers and malicious intent to violate our US Constitutional rights." JC-62a.

*THE MANAGEMENT RISKS REPORT RETRIEVED  
BY COMPLAINANT ON DECEMBER 31, 2006*

195. An undated report entitled "DRAFT Review of MANAGEMENT RISKS BY INTERIM EXECUTIVE DIRECTOR ("Management Risks report") was on the RIH USA server. Ex. JC-71.

196. Complainant retrieved the Management Risks report from the RIH USA server on

or about December 31, 2006. (Tr. 9/23/13 at 132-133)

197. On January 2, 2007, Complainant's attorney sent the Management Risks report to someone else. Ex. JC-64.

*THE EFFECT OF THE INCIDENTS  
ON COMPLAINANT'S JOB PERFORMANCE*

198. The RIH USA staff knew about Respondent Haig's accusations against Complainant regarding her religion. (Tr. 9/23/13 at 125)

199. The incidents did not prevent Complainant from providing good work for RIH USA and did not prevent her from being satisfied with her job. (Tr. 9/24/13 at 168)

200. The emails disparaging Complainant because of her religion did not affect her job duties other than make her upset. (Tr. 9/24/13 at 123)

201. Complainant did not take notes when incidents occurred. (Tr. 9/24/13 at 86-87)

*THE JANUARY 2, 2007 MEETING  
BETWEEN COMPLAINANT AND MS IAEA*

202. On January 2, 2007, Complainant met with Ms. Iaea. Ex. R-163 (HCRC 0274-0276). Ms. Iaea took notes of the meeting and shared them with Mr. Riecker on January 3, 2007. Ex. R-163 (HCRC 0274-0276).

203. At the meeting, Complainant represented herself to Ms. Iaea as the compliance officer of RIH USA. Ex. R-163 (HCRC 0274-0276).

204. At the meeting, Complainant talked negatively about Ms. Lenz's teamwork for 10 to 15 minutes. Ex. R-163 (HCRC 0274-0276).

205. At the meeting, Complainant informed Ms. Iaea that there was rampant and blatant anti-semitism, sexism, and racism by Respondent Haig. Ex. R-163 (HCRC 0274-0276). Ms. Iaea asked Complainant if she reported it. Complainant replied that she had reported it to Ms. Lenz. Ex. R-163 (HCRC 0274-0276). Ms. Iaea asked Complainant if she had followed up. Complainant replied that she had not. Ex. R-163 (HCRC 0274-0276).

206. Complainant stopped seeing her psychiatrist in 2007. She next saw a medical professional for treatment related to her work for RIH USA in 2013 after the discovery cut-off in this matter. (Tr. 10/15/13 at 74-75)

#### IV. CONCLUSIONS OF LAW<sup>5</sup>

##### A. JURISDICTION

Complainant was employed by RIH USA from March 14, 2005 until her separation on January 3, 2007. The Commission has jurisdiction over the Respondents pursuant to HRS § 378-1. Section 378-1 defines "employer" to mean any person, including the state or any of its political subdivisions and any agent of any such person, having one or more employees, but shall not include the United States. Because RIH USA had one or more employees, RIH USA is an employer.

Moreover, the Commission had adopted the traditional economic realities test with respect to employee status. *Santiago v. Iolani Swim Club*, HCRC DR No. 92-007. The weight of the evidence showed that Complainant was an employee of RIH USA and not an independent contractor. RIH USA and its supervisory employee, Respondent Haig had complete control over the means and manner of Complainant's performance. Complainant thought she was an employee and specifically decided not to restart her "Organization Headquarters" business. Moreover, the manner in which RIH USA informed Complainant that her services were no longer needed by RIH USA and to apply to Snelling to work for RIH USA indicated that RIH USA treated her as an employee. In addition, the IRS decision was persuasive. Ex. JC-146. Hence, Complainant was an employee of RIH USA.

##### B. THE RETALIATORY DISCHARGE CLAIM

RIH USA discharged Complainant effective January 3, 2007 for non-discriminatory reasons. In order to show that RIH USA had discharged Complainant as retaliation under HRS § 378-2(2), a tripartite burden-shifting test needed to be satisfied. *Schefke v. Reliable Collection Agency*, 96 Haw 408, 426 (2001). As stated in *Schefke*:

(1) the plaintiff must first establish a prima facie case of such retaliation by demonstrating that (a) the plaintiff (i) "has opposed any practice forbidden by HRS chapter 378, Employment Practices, Part I, Discriminatory Practices or (ii) has filed a complaint, testified, or assisted in any proceeding respecting the discriminatory practices prohibited under this part," (b) his or her "employer, labor organization, or employment agency has ... discharged, expelled, or

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<sup>5</sup> To the extent that the following conclusions of law also contain findings of fact, they shall be deemed incorporated into the findings of fact.

otherwise discriminated against the plaintiff," and (c) "a causal link has existed between the protected activity and the adverse action;" (2) if the plaintiff establishes a prima facie case of retaliation, the burden shifts to the defendant to provide a legitimate, nondiscriminatory reason for the adverse employment action; and (3) if the defendant articulates such a reason, the burden shifts back to the plaintiff to show evidence demonstrating that the reason given by the defendant is pretextual.

*Id.* (brackets and citations omitted).

1. The Executive Director established a prima facie case of retaliation

In May or June 2006, Complainant complained to Ms. Lenz about the March 20, 2006 email. The March 20, 2006 email contained discriminatory statements about Complainant and her religion to which she objected. Given her putative status as Executive Director, the proper authority for Complainant to submit a complaint with RIH USA regarding discrimination in the workplace was the BOD, a director, an officer, or her supervisor. Complainant did this when she objected to Ms. Lenz who was an officer of RIH USA in 2005 and 2006. Complainant's complaint also occurred prior to her discharge effective January 3, 2007. Hence, the Executive Director established a prima facie case of retaliatory discharge.

2. Respondents provided a legitimate, nondiscriminatory reason for Complainant's separation

The Respondents provided substantial evidence of the need for reorganization starting in November 2005. RIH USA's failure to generate sufficient income from sources other than Respondent Haig jeopardized its 501(c)(3) status. Respondent Haig initially tasked Complainant through the MOI and the Details of Responsibilities with the duty to raise funds. However, the MOI expired and Complainant did not feel any obligation or responsibility for raising funds.

The management dysfunction during Complainant's entire employment was palpable. RIH USA ostensibly used independent contractors, including Complainant, even though those work relationships incurred employee liability to RIH USA. RIH USA enjoyed none of the benefits of having independent contractors while paying the independent contractors a higher rate to justify the lack of benefits which RIH USA, by all accounts, was still liable for. The employment contracts which never materialized were ill advised. The business necessity for some of the workers was unclear. RIH USA did not appear to produce or do anything of

substance despite the relatively high payroll costs.

Hence, it was more than prudent for RIH USA to reorganize and have all personnel actions administered by Snelling. There was a complete lack of management responsibility. Given the lack of accountability, it was actually more practical to discharge everyone and have everyone reapply through Snelling than any other alternative. Therefore, Respondents provided a legitimate, nondiscriminatory reason for Complainant's separation.

3. The Executive Director did not show Complainant's separation was pretextual

There was no pretext. RIH USA discharged everyone, Jewish or not, female or not. The argument of the "collusional" staff was not reasonable or credible especially considering the seemingly constant power struggles amongst the staff. There did not appear to be any correlation between a complaint by Complainant and increased discussion of reorganization. There was also no discernible reason for retaining Complainant as Executive Director. She did not raise substantial funds for RIH USA or ensure its compliance. The Executive Director duties that Complainant did perform could be easily distributed according to who applied to Snelling and was retained, including Complainant if she had applied to Snelling.

Complainant also had the opportunity to apply to Snelling, but chose not to, which was well within her rights. However, retaliation under a "failure to rehire theory" generally requires the former employee reapply or at least make every reasonable attempt to convey to the employer her interest in a particular position. *See, Hotchkiss v. CSK Auto Inc.*, (E.D. Wash., 2013). Complainant did neither.

Therefore, in the absence of pretext, Complainant's separation from RIH USA was for a legitimate, nondiscriminatory reason.

C. THE "HOSTILE WORK ENVIRONMENT" ANALYSIS APPLIES TO HARASSMENT BASED ON BOTH SEX AND RELIGION

The Hawaii Supreme Court has held that a hostile environment sex harassment ("HESH") claim exists when an employee can show:

- (1) that he or she was subjected to sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, (2) that this conduct was unwelcome; and (3) that the conduct had the **purpose** or effect of either: (a) unreasonably interfering with an individual's work performance or (b) creating an

intimidating, hostile, or offensive work environment.

*Nelson v. University of Hawaii*, 97 Haw. 376, 391 (2001)(bold added).

Given the public policy considerations and the similarity between sex and religious discrimination, the HESH analysis is also adopted for the claim of religious discrimination.

D. THE HOSTILE WORK ENVIRONMENT BASED ON RELIGION AND FAILURE TO INVESTIGATE CLAIMS

RIH USA allowed a hostile work environment based on religion and did not investigate Complainant's complaint of religious discrimination. There was substantial evidence of religious discrimination in the form of: "safety reports" maligning Complainant's religion on the file server; emails originating from Respondent Haig which contained discriminating statements about Complainant's religion; and conversations between Complainant and Respondent Haig. Respondent Haig had known of Complainant's religion since at least October 2005. Complainant did not welcome the conduct. The purpose of the Respondent Haig's religious discrimination conduct was to create an intimidating environment for Complainant. Therefore, a violation of HRS §378-2(a)(1)(A) occurred. However, any failure by RIH USA to investigate the complaint by Complainant of religious discrimination is part and parcel with the hostile work environment based on religion claim.

E. THE HOSTILE WORK ENVIRONMENT BASED ON SEX CLAIM

There was insufficient evidence the effect of the alleged sex discrimination conduct was to create an intimidating, hostile, or offensive work environment. In addition the effect of the alleged sex discrimination conduct did not affect Complainant's work performance, let alone unreasonably interfere. Moreover, the credible evidence did not indicate the purpose of the alleged sex discrimination conduct satisfied the requirement of the HESH claim. As a result, the HESH claim fails.

F. LIABILITY

Respondent RIH USA is liable for all damages by its supervisory employees, but Respondent Haig is not individually liable.

It is well-settled that employers are prohibited from discriminating in employment because of religion. HRS § 378-2; HAR § 12-46-151. There was also no reasonable dispute that

RIH USA served as Complainant's employer as shown by the IRS ruling. HRS § 378-1. Moreover, the Commission has the authority to enforce those violations. HRS § 378-5. Hence, Respondent RIH USA is liable.

However, the Hawaii Supreme Court recently held that employees are not personally liable under HRS § 378-2(a)(1)(A). *Lales v. Wholesale Motors Co.*, 2014 WL 560829 (Haw. Feb. 13, 2014). Moreover, it was not shown that recognizing only the corporate employer will bring about any injustice or inequity.

The corporate "veil" will be pierced and the legal entity of the corporation will be disregarded only 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 perpetrate a fraud or defeat a rightful claim.

*Chung v. Animal Clinic, Inc.*, 63 Haw. 642, (1981). RIH USA did not appear to prevent Complainant from filing a claim for Workers' Compensation benefits and Complainant did not show her claim for unemployment insurance benefits was otherwise disturbed by recognition of RIH USA as the employer. There was no evidence RIH USA used its corporate status to defeat a rightful claim or perpetuate a fraud. Hence, there was no injustice or inequity shown to disregard the corporate fiction.

#### G. REMEDIES

Both compensatory and punitive damages are authorized by law under HRS § 368-17.

##### 1. Compensatory Damages

Pursuant to HRS §§386-3(5) and 368-17(8), the Commission has the authority to award damages for an injury caused by the discriminatory practice and costs including a reasonable attorney's fee. Executive Director and Complainant argue for damages due to emotional distress.

Despite the opportunity to do so, Complainant did not provide medical documentation which was contemporaneous with the injury sustained. Complainant's reason for her inability to secure her prior medical records, i.e. her psychiatrist moved, was not credible especially considering the extended length of time between her separation from RIH USA and the docketing of this matter.

Although Complainant's subjective complaints were bolstered by a medical visit in 2013, there remained a gap of approximately six years between when Complainant's employment

ended with RIH USA and that medical visit in 2013. (Tr. 10/15/13 at 74-75) In that interim, Complainant also had intervening employment and a separation for reasons entirely unrelated to her separation from RIH USA which was not properly considered by Complainant's medical expert. Furthermore, Respondents were prejudiced by their inability to retain a rebuttal medical expert during the discovery period. Finally, the emotional distress damages were viewed in light of Complainant's desire for an employment contract in October 2006 (Tr. 9/24/13 at 46), her surprise with respect to the reorganization meeting on December 21, 2006 at Snelling, and her not wishing to apply for a position with Snelling. As such, \$500 in compensable damages is awarded.

## 2. Punitive Damages

Punitive damages are assessed in addition to compensatory damages to punish a respondent for aggravated or outrageous misconduct and to deter the respondent and others from similar conduct in the future. *Masaki v. General Motors Corp.*, 71 Haw. 1, 6 (1989). The Executive Director is required to show by clear and convincing evidence that Respondent RIH USA acted wantonly, oppressively or with such malice as implies a spirit of mischief or criminal indifference to civil obligations or that there has been some willful misconduct or entire want of care which would raise the presumption of a conscious indifference to consequences. *Id.* Respondent Haig acted intentionally on behalf of RIH USA and RIH USA did not investigate Complainant's complaint. It is recommended that Respondent RIH USA pay punitive damages of \$5,000, i.e. ten times the compensatory damages.

## 3. Costs

HRS §§ 368-3 provides for the recovery of costs including reasonable attorney's fees. Those costs and attorney's fees incurred by Complainant should be reimbursed by Respondent RIH USA.

## 4. Declaratory and Equitable Relief

The Executive Director requests that the Commission order Respondents to:

1. Immediately cease and desist from discriminating or retaliating against Complainant-Intervenor and all employees or individuals on the basis of religion, sex, or retaliation in matters relating to employment practices;

2. Immediately develop and implement a written non-discrimination and employment policy including the bases of religion, sex, and retaliation;
3. Conduct employee, supervisory and management training programs on these policies;
4. Disseminate the above-described non-discrimination policies to all employees, managers, supervisors, and agents;
5. Publish the results of the Commission's contested case hearing in a press statement provided by the Commission in at least one newspaper published in the state of Hawaii and having a general, state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in that following week, in order to minimize or eliminate discrimination in employment; and
6. Provide such other and further relief as is just and appropriate in the circumstances.

In order to prevent future incidents involving RIH USA or Respondent Haig, I recommend that the Commission order all the equitable relief requests.

#### **V. RECOMMENDED ORDER**

Based on the matters set forth above, I recommend that the Commission find and conclude that Respondent RIH USA violated HRS § 378-2(a)(1)(A) by subjecting Complainant to unlawful religious discrimination.

For the violation found above, I recommend that pursuant to HRS § 368-17, the Commission should order:

1. Respondent RIH USA to pay Complainant \$500 (FIVE HUNDRED DOLLARS) as damages in compensation for her emotional injuries caused by the hostile work environment based on religion.
2. Respondent RIH USA to pay Complainant \$5,000 (FIVE THOUSAND DOLLARS) as punitive damages.
3. Respondent RIH USA to pay to Complainant the reasonable attorney's fees and costs incurred in bringing this action.
4. Respondent RIH USA to immediately cease and desist from discriminating or retaliating against Complainant-Intervenor and all employees or individuals on the basis of religion, sex, or retaliation in matters relating to employment practices.
5. Respondent RIH USA to immediately develop and implement a written non-

discrimination and employment policy including the bases of religion, sex, and retaliation.

6. Respondent RIH USA to conduct employee, supervisory and management training programs on these policies.
7. Respondent RIH USA to disseminate the above-described non-discrimination policies to all employees, managers, supervisors, and agents.
8. Respondent RIH USA to publish the results of the Commission's contested case hearing in a press statement provided by the Commission in at least one newspaper published in the state of Hawaii and having a general, state-wide circulation, in such manner and for such time as the Commission may order, but not less than once in the Sunday edition and once in that following week, in order to minimize or eliminate discrimination in employment.

Dated: Honolulu, Hawaii, March 10, 2014.

HAWAII CIVIL RIGHTS COMMISSION

  
\_\_\_\_\_  
ALAN WONG  
Hearings Examiner

## APPENDIX A

On June 7, 2007, Complainant Kay Lorraine Bate ("Complainant") filed a complaint against Respondents Research Institute for Hawaii.USA ("RIH USA") and Christopher Haig ("Haig"), as an individual. She alleged harassment and termination from her job because of her Jewish religion. Complainant also alleged retaliation for reporting the religious harassment and she further alleged sexual harassment.

From August 23, 2007 to January 31, 2012, the Hawaii Civil Rights Commission extended the time within which to investigate all open complaints filed with the Commission.

On December 14, 2011, the Executive Director completed his investigation of Complainant's complaint and issued his Notice of Finding of Reasonable Cause to Believe That Unlawful Discriminatory Practices Have Been Committed.

On February 6, 2013, the Executive Director served the final conciliation demand letter and conciliation agreement on Respondents. Respondents' deadline to respond was February 22, 2013. The Executive Director requested docketing of Complainant's complaint on February 25, 2013.

On March 8, 2013, the complaint was docketed for administrative hearing and a Notice of Docketing of Complaint and Notice of Scheduling Conference and Order were issued and later amended. On March 21, 2013, the Executive Director filed his Scheduling Conference Statement. On March 28, 2013, Respondents filed their Scheduling Conference Statement. On April 5, 2013, a Scheduling Conference was held. Participating were Susan M. Ichinose, Esq. and Dana A. Barbata, Esq. for Complainant, Enforcement Attorney April L. Wilson-South, Bruce D. Voss, Esq. for Respondents, and Respondent Haig. A Scheduling Conference Order was issued on April 8, 2013.

On March 12, 2013, Complainant moved to intervene. On April 1, 2013, the Executive Director supported Complainant's motion to intervene. On April 1, 2013, Respondents opposed Complainant's intervening. The Hearings Examiner's Order Granting Complainants' Motion for Intervention was filed on April 8, 2013.

On June 12, 2013, the Executive Director filed a motion to compel discovery. On June 17, 2013, Respondents opposed the motion. On July 1, 2013, the Executive Director's motion to compel discovery was granted in part and denied in part.

On June 13, 2013, Complainant filed a motion for supervision of the oral deposition of Respondent Haig. On June 18, 2013, Respondents opposed the motion. The Executive Director joined in Complainant's motion. On June 27, 2013, the Complainant's motion for supervision of the oral deposition of Respondent Haig was granted in part and denied in part.

On July 3, 2013, Complainant filed a motion to extend discovery cut-off for specific and limited purposes. On July 8, 2013, Respondents opposed the motion. The Executive Director joined in Complainant's motion. On July 15, 2013, the discovery cut-off was extended to August 2, 2013 for the limited purpose of conducting the oral depositions of Respondent Haig, Jeffrey Mead, Joseph Torres, and Respondent RIH USA's Rule 30(b)(6) representative, but Complainant's motion was otherwise denied.

On July 19, 2013, Complainant filed a motion to compel discovery of electronically stored information and financial records after the discovery cut-off, which was July 5, 2013. On July 24, 2013, Respondents opposed the motion. The Executive Director joined in Complainant's motion. On August 5, 2013, the Complainant's motion to compel discovery was granted in part and denied in part.

On August 2, 2013, a Notice of Hearing was issued.

On August 5, 2013, the Notice of Hearings for Motions filed on August 2, 2013 was issued.

On August 15, 2013, the Orders regarding the Motions were filed.

On August 20, 2013, the Prehearing Conference Order was filed.

On September 5, 2013, the Amended Notice of Hearing and Order was filed.

On October 3, 2013, the Order as to Further Hearing Dates was filed.

On October 28, 2013, the Second Order as to Further Hearing Dates was filed

The Hearing dates were: September 23, 24; October 15, 16, 17, 21, 22; December 3 and 9, 2013.

On December 10, 2013, the Order as to Additional Memoranda was filed.

On January 9, 2014, all parties filed post-hearing briefs.