

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI'I

MORNING HILL FOODS, LLC, dba MANA BU'S,) CIVIL NO. 18-1-0034-01 KKH
)
Appellant,) ORDER AFFIRMING IN PART AND
) MODIFYING IN PART THE HAWAI'I
vs.) CIVIL RIGHTS COMMISSION'S FINAL
) DECISION AND ORDER DATED
) DECEMBER 12, 2017
THE HAWAII CIVIL RIGHTS COMMISSION,)
) ORAL ARGUMENT
Appellee.) DATE: May 31, 2018
) TIME: 9:00 a.m.
) JUDGE: Honorable Keith K. Hiraoka
)
)

**ORDER AFFIRMING IN PART AND MODIFYING IN PART
THE HAWAI'I CIVIL RIGHTS COMMISSION'S
FINAL DECISION AND ORDER DATED DECEMBER 12, 2017**

Appellant Morning Hill Foods, LLC, dba Mana Bu's ("Appellant") filed a Notice of Appeal with this Court on January 8, 2018, appealing The Hawai'i Civil Rights Commission's Final Decision and Order dated December 12, 2017, Docket No. 16-002-E-A.

Oral argument was held on May 31, 2018, before the Honorable Keith K. Hiraoka, with Andrew Daisuke Stewart, Esq., appearing on behalf of Appellant and Frances E. H. Lum, Deputy Attorney General, appearing on behalf of Appellee The Hawai'i Civil Rights Commission.

The Court has reviewed the Notice of Appeal to Circuit Court, the Statement of the Case, the Answer, the Certified Record on Appeal, the briefs, and has heard and considered the arguments of the parties.

THE COURT, in ruling on this matter, applied the de novo standard of review as required by section 368-16(a), Hawaii Revised Statutes. University of Hawai'i v. Hoshijo, 102 Hawai'i 307, 309, 76 P.3d 550, 552 (2003).

1. The six extensions of the 180-day deadline for the Executive Director of the Hawai'i Civil Rights Commission to issue a reasonable cause determination did not violate Appellant's constitutional rights. See Steinberg v. Hoshijo, 88 Hawai'i 10, 960 P.2d 1218 (1998).

2. Hawaii Administrative Rule section 12-46-33 is not unconstitutional and does not shift the burden of proof impermissibly on Appellant in an age discrimination case.

3. The Court has reservations about whether an award for lost wages could be made to the complainant when the complainant never held a job with Appellant and about whether an award for emotional distress damages can be justified where there is no evidence of physical injury and no evidence that Appellant's conduct was specifically directed to the complainant. However, because Appellant did not file exceptions to the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, and Appellant does not challenge this issue, the Court affirms the Hawai'i Civil Rights Commission's award of lost wages in the amount of \$1,080 and modifies the award of compensatory damages for emotional

distress by reducing it from \$2,500 to \$1,000, which is the award proposed by the Hearing Examiner.

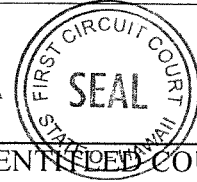
4. There is no basis to have disqualified Commissioner Ebesugawa even if the objection was timely made.

IT IS THEREFORE HEREBY ORDERED that the Hawai'i Civil Rights Commission's Final Decision and Order dated December 12, 2017 is affirmed in all respects except to modify the award of damages for emotional distress from \$2,500 to \$1,000.

DATED: Honolulu, Hawaii

JUL 13 2018

KEITH K. HIRAOKA



JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM

A handwritten signature in cursive script that reads "Andrew D. Stewart".

ANDREW DAISUKE STEWART, ESQ.
Attorney for Appellant