

HAWAII CIVIL RIGHTS COMMISSION

STATE OF HAWAII

MARCUS L. KAWATACHI,
Executive Director,¹ on
Behalf of the Complaint
Filed by JUNKO KNIPE

vs.

GARY SOMMER, as Trustee of the
HOLUALOA RESIDENCE TRUST
DATED September 18, 2017;
PETER PRITCHARD, as Trustee
of the HOLUALOA RESIDENCE
TRUST DATED September 18, 2017, and
GARY SOMMER, individually,
Respondents.

Docket No. 24-001-H-D-SH-RET

HEARING EXAMINER'S
FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDED
ORDER; EXHIBIT A

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I. INTRODUCTION

A. SUMMARY OF PARTIES' POSITION

Every case has at least two versions of the events as seen from different perspectives.²

Likewise, every case has a beginning and this one arises from a rental agreement dated June 1, 2014 between the Respondents Holualoa Residence Trust with Gary Sommer and Peter Pritchard as Trustees, Gary Sommer, individually and the Complainant Junko Knipe, a tenant.

¹ Executive Director is referred to herein as "ED."

² Additional live witnesses can provide corroboration of the differing perspectives. Such was not the case here. Neither Complainant nor Respondent called any witnesses to corroborate their testimony, with the exception of Dr. Clifford Arrington whose testimony is addressed herein. Complainant testified that she sought counseling with a psychologist whose testimony might have been beneficial. (TR 1, pages 160-161). ED's Exhibit 93 which is an undated transcription of an interview with Max Crispo, another tenant, is relevant, despite not being sworn testimony or subject to cross-examination. The same is true for the interview of Glen Taka. (ED's Exhibit 94). Complainant and her late husband resided in a unit in the Captain Cook area. Mr. Taka was on the board.

From Complainant Knipe's perspective of the events, she developed a multiple chemical sensitivity (MCS) to certain fragrances used on the rental premises six months after entering into the rental agreement. Complainant requested reasonable accommodations to prevent her severe debilitating reactions. In the beginning, Respondent Gary Sommer accommodated Complainant Knipe's condition by requesting other tenants use fragrance-free detergents and soaps. Respondent Sommer himself changed his shaving cream, deodorant, shampoo and conditioner.

Complainant Knipe's subsequent offering of miso soup, small gifts including clothing from her late husband and washing Respondent Sommer's work uniforms resulted in unwanted, explicit and vulgar sexual comments from Respondent Gary Sommer. These comments and verbal overtures were persistent and usually ended with Respondent Sommer apologizing for his behavior, especially when he used vulgar and offensive sexual language. When Complainant followed up on her request for the promised compensation of \$1800 due to a sewer leak, Respondent Sommer conditioned payment upon Complainant allowing Respondent to "touch, kiss, and massage" her making her feel that Respondent Sommer treated her like a "prostitute." This made her feel disgusted, angry and disrespected. Hoping to discourage Respondent Sommer's sexual overtures, Complainant informed him that she had a small brain tumor. Despite acknowledging her "frail health," Respondent Sommer offered to give Complainant a massage. Complainant refused, making it clear that she had no romantic interest in him. Thereafter Respondent Sommer began to retaliate. Knowing Complainant Knipe's MCS condition, Respondent Sommer began spraying herbicides and pesticides without adequate notice to Complainant, resulting in additional physical harm and emotional stress. Respondent Sommer also engaged in harassing behavior by entering onto her lanai area without notice or permission, moving her personal property and leaving threatening notes.

From Respondents Gary Sommer and Peter Pritchard's perspective, Complainant Knipe has a pattern of engaging in landlord-tenant disputes meaning that she would file complaints for the purpose of attempting to extract financial benefits as a renter. Respondents Sommer and Pritchard also believed that Complainant Knipe had hidden her MCS condition at the time of entering into the rental agreement and if they had known would never have rented to her.³

As to the sexual advances by Respondent Sommer, Complainant Knipe initially never said "no" or discouraged him but rather took advantage of his generous nature in taking her to shop at Costco and run various other errands. Did he mistake her kindness of offering miso soup, small gifts include clothing from Complainant's late husband, and washing his work uniforms for affection? Gary Sommer admits that he "fell in love" with Complainant Knipe and sent explicit sexual communications, assuming that they were two lonely people as she was recently widowed. Complainant's rejection made him upset and angry as he felt he had been taken advantage of.

Four legal issues are presented: Did Complainant Knipe have a disability? If so, did Respondents Trustees Sommer and Pritchard discriminate based on that disability? Did Respondent Sommer engage in sexual harassment? Did Respondent Sommer engage in retaliation after being rebuffed? The answer is "yes" to all four questions.

B. PROCEDURAL HISTORY

Complainant Junko Knipe filed an initial complaint with the Hawaii Civil Rights Commission ("HCRC") on June 26, 2020 through her attorney, Rebecca Leibowitz of the Legal Aid Society of Hawai'i naming Respondents Holualoa Residence Trust, Gary Sommer, Peter

³Query: If that had been the case, would Respondents still face discrimination as a result of a disability? (TR 2, pages 72 and 78).

Pritchard, Mary Love Realty, Mary Love, and Andrea DeMello. (ED's Exhibit 1).⁴ A few months later, on November 3, 2020, Junko Knipe filed a subsequent complaint with the HCRC again through her attorney, Rebecca Leibowitz, adding further dates concerning Respondent Gary Sommer's adverse behavior. (ED's Exhibit 2)

On June 17, 2024, this case was docketed for a contested hearing. The Honorable Leslie A. Hayashi (Ret.) was assigned as the hearing examiner. Proposed dates were accepted by the parties. The pre-hearing conference and subsequent hearing dates were moved to one week later.

On July 16, 2024, a scheduling conference was held following the filing of the scheduling conference statements.⁵ Following the scheduling conference, the parties agreed to amend the caption to reflect Gary Sommer and Peter Pritchard as the Trustees of the Holualoa Residence Trust and Gary Sommer individually on July 17, 2024.⁶ Peter Pritchard was dismissed in his individual capacity, as was Mary Love Realty and Andrea DeMello, individually.

As parties could not reach a settlement, a prehearing conference was held on November 26, 2024. Parties filed their pre-hearing conference statements on November 19th and November 20th, 2024.⁷ At the prehearing conference, counsel stipulated to the ED's sixty-seven Proposed/Stipulated Facts and to ED's 124 Exhibits which includes the investigation files. Counsel further stipulated that judicial notice could be taken of the Japanese words and translations used in the emails. Mr. Pililaau confirmed that no interpreter was needed for Ms.

⁴ Both complaints allege discrimination on the basis of race, sex, age, retaliation, marital status, disability and ancestry/national origin. However, by the time of the hearing, the claims had been narrowed down to discrimination on the basis of a disability, sexual harassment and retaliation.

⁵ ED through his attorney Eric Pililaau timely filed his Scheduling Conference Statement on July 3, 2024. William Reece on behalf of Gary Sommer as a trustee and individually filed his statement on July 15, 2024, five days past the July 10, 2024 deadline.

⁶ Although personally served, Peter Pritchard has never appeared in this matter and has consistently refused service of subsequent documents and is deemed to be in default. Hearing Officer (HO) Exhibit A.

⁷ Although Respondent's counsel missed the filing deadline by one day, he had sent an unfiled marked copy to Mr. Pililaau on the due date.

Junko Knipe. When asked if Respondent Sommer intended to call any expert witnesses on his behalf, Respondent Sommer's counsel Mr. Reece stated that although his client suffers from Tourette's Syndrome, he did not intend to rely on that condition as a defense.

The hearing commenced on December 2, 2024 and concluded the following day on December 3, 2024.⁸ Those present included Eric Pililaau on behalf of the ED, Staff Attorney Joey Badua, Junko Knipe, the complainant, and Rebecca Leibowitz, Ms. Knipe's Legal Aid attorney. Respondent Gary Sommer and his counsel William Reese appeared by zoom. Despite notice of the proceedings, Peter Pritchard did not appear and is deemed to be in default due to his failure to appear or respond and his refusal to respond to various notices.⁹

II. FINDINGS OF FACT

In reviewing the exhibits, assessing the demeanor and credibility of the parties and evaluating their testimony, this hearing examiner makes the following Findings of Fact ("FOF")¹⁰ and Conclusions of Law ("COL"):

1. Respondent Holualoa Residence Trust ("Trust") owns the real property located at 78-6618 Mamalahoa Highway, Holualoa, HI 96725 on the Island of Hawai'i. (ED's Exhibit 4, page 3, paragraph 7; ED's Exhibit 101). ED's Exhibits 104 through 119 are photos of the subject property.

⁸ The hearing transcript for December 2, 2024 is designated as "TR 1" while the transcript for December 3, 2024 is designated as "TR 2"). It is unclear if the printed copies of the transcripts are identical and thus there may be discrepancies between the transcript pages cited by the hearing officer and those cited by counsel.

⁹ See Exhibit A, Hearing Officer's Exhibit List. Accordingly, Peter Pritchard, as Trustee of the Holualoa Residence Trust has defaulted.

¹⁰ To the extent these Findings of Fact contain Conclusions of Law, they are deemed incorporated into the Conclusions of Law.

2. The co-owners of the Trust are Respondents Gary Ralph Sommer and Peter Pritchard, who are half-brothers. (ED's Exhibit 4, page 3, paragraphs 8 and 9; ED's Exhibit 101).¹¹
3. Respondent Gary Sommer lives on the property while Peter Pritchard resides in Mesa, Arizona. (ED's Exhibit 4, page 4, paragraphs 13 and 14). Respondent Sommer's unit is adjacent to Ms. Knipe's unit.¹²
4. The property has a number of rental units. Currently the Trust earns \$1500 a month in rental income. (TR 2 at pages 62-63).
5. On or about June 1, 2014, Junko Nagamitsu Knipe signed a two-page Rental Agreement for a one-bedroom one-bathroom unit on the property. The lease was for a one-year period after which it would become a month-to-month tenancy. The rent was \$1,150 plus 4% GET (general excise tax). (ED's Exhibit 99; Hearing Transcript December 2, 2024 (TR 1 at pages 11-15).
6. Complainant Knipe moved into the premises on July 1, 2014. (TR 1 at page 11). At that time Ms. Knipe, who is Japanese was 60 years old. She became a widow when her husband, Louis Leroy Knipe passed away in 2011. (TR 1 at pages 9-10).¹³
7. Respondent Sommer testified that the first six months of the rental agreement with Complainant were "fine." (TR 2 at page 55).

¹¹ Respondent Trustee Peter Pritchard was served with the Notice to Docket Complaint. Hearing Officer's Exhibit 1 in Exhibit A.

¹² Respondent Sommer testified that he works at Sack n Save, earning \$15 per hour and suffers from Tourette's Syndrome. (TR 2 at page 53).

¹³ Complainant Junko Knipe was born in 1954 and raised in Japan; has a college degree; worked in an international telephone and telegraph company as an overseas operator, taught English to junior high, high and college students; and worked as an executive secretary for American Petroleum Industries for three years. (TR 1 at page 9). At the time she entered into the rental agreement in June 2014, she was 60 years old. (TR 1 at page 11).

8. In January 2015, six months after assuming residency, Complainant Knipe experienced adverse physical symptoms which included severe headaches, palpitations, and nausea. She also suffered “eye burning,” sinus and ear pressure and shortness of breath to the point of “becoming an invalid.” “I cannot move around. I am so sick to do anything. And my energy becomes very much drained.” (TR 1 at pages 16-18, 21-22 and 26-27).
9. Complainant Knipe believed she suffered from multiple chemical sensitivity (MCS) from scented products. (TR 1 at page 16-18.) Her belief was based on discussions with acquaintances, friends, a professional acupuncturist, physical therapist and a “friend who was extremely well-versed in alternative medicine.” (TR 1 at pages 20, 29). In addition, Ms. Knipe’s symptoms would abate when she vacated the premises. (ED’s Exhibit 6).
10. At the December 3, 2024 hearing, Dr. Clifford Arrington was called to testify concerning Complainant’s diagnosis and condition. However, Dr. Arrington testified that he had not made any such diagnosis. (TR 2, pages 33-34). Complainant became his patient on April 19, 2018. (TR 2 at page 27). Dr. Arrington testified that ED’s Exhibit 86 dated August 17, 2020 in which he states that Ms. Knipe suffered from MCS was written at Complainant’s request. (TR 2, page 35). Dr. Arrington further testified he was familiar with MCS from his professional and personal experience and that the only treatments for this condition “are preventative measures.” (TR 2 at page 30). This means “avoidance, reduction and minimize” exposure to the chemicals. (TR 1 at page 30).

11. Complainant Knipe informed Respondent Gary Sommer of her symptoms and requested his assistance in refraining from using certain scented products. (ED's Exhibit 124, Admission #10). This was followed up with a letter dated January 20, 2015 which Complainant hand-delivered to Respondent Sommer requesting an accommodation by refraining from using scented products and only using "unscented" products. (ED's Exhibit 6).
12. Throughout her tenancy, Complainant hesitated to request Respondent Sommer's assistance. She had always taken care of herself and "hated the idea of having to ask him for his help." (TR 1 at pages 24 and 41). Complainant felt "powerless" and "helpless" so only made "humble requests" and never demanded specific actions. (TR 1 at page 50).
13. Respondent Gary Sommer agreed to Complainant's request and asked he to draft house rules concerning refraining from the use of scented products on the premises, including the laundry room, a common area shared by the tenants. (ED's Exhibit 82; TR 1 at pages 30-31). Respondent Sommer then issued these rules to all tenants in the form of a document entitled SOMMER'S HOUSE RULES. As a "FRAGRANCE-FREE" property, effective August 1, 2016, Respondent Sommer noted that "The landlords respect, empathize with and protect tenant(s) with MSC (multiple chemical sensitivity) on the premises." Further, violators would face punishment which could include immediate lease termination. (ED's Exhibit 82; TR 1 pages 31-36).¹⁴

¹⁴ Sommer's House Rules include matters other than the fragrance-free policy such as no pets, no smoking, designated parking and other such matters that would usually be included in a landlord's house rules.

14. By way of letter to tenants Mark and Julie Herendeen, dated August 28, 2017, Respondent Sommer acknowledged Complainant's multi-chemical sensitivity as a "disability under the laws" and requested that the tenants refrain from using scented chemicals. (ED's Exhibit 8).
15. Due to a sewage leakage emitting noxious odors from May through August 2018, Complainant again experienced significant health difficulties which were like those experienced from exposure to scented products. The leak could not be found for months until Complainant herself discovered the leak by crawling under her unit and it was ultimately fixed. During the time of the leak, Complainant suffered "three months of hell." Complainant drafted a letter to Respondent Pritchard concerning the leakage but never mailed the letter to Respondent Pritchard. (ED's Exhibit 10, TR 1 at pages 38-39). Later, however, Complainant discussed this matter with Respondent Pritchard on one of his visits to the property. (TR 1 at page 61).
16. As a result, Respondent Sommer agreed to compensate Ms. Knipe in the amount of \$1800 which was never paid. (TR 2 at page 17; TR 2 at pages 59-60). When asked why he didn't make the payment as promised, Respondent Sommer testified that he got "sour feelings on compensating" Complainant. (Tr 2 at pages 81-89). This change of heart occurred after Complainant rejected Respondent Sommer's sexual overtures.
17. Starting in the summer of 2017, Complainant volunteered to pull weeds and use vinegar as an herbicide. (TR 1 at pages 58-59, 133). Complainant had experienced a

sensitivity to “poison” at her previous residency in Captain Cook according to and interview with Glen Taka during the investigation. (ED’s Exhibit 94).¹⁵

18. Beginning in 2019, Respondent Sommer began to express his romantic feelings in earnest toward Complainant. Initially, Complainant and Respondent Sommer’s interactions were cordial and friendly. Back on August 29, 2017, Complainant texted Respondent Sommer: ” Gary-San. I made some soup for you. Please call if you don’t mind having some. I will bring it out to you like the last time.” (ED’s Exhibit 9).¹⁶ Complainant also gifted Respondent Sommer a sake set and clothing from her late husband and also washed Respondent Sommer’s work uniforms. (TR1 at pages 45-48.) Complainant testified that such acts were at best “a small token of appreciation.” (TR 1 at pages 86-89 and 95-97).¹⁷ Respondent Sommer testified that Complainant would engage in rubbing his chest and stomach and looking at him with her brown eyes whenever she wanted a favor from him. (TR 2 at pages 83-84). However, Respondent Sommer’s testimony about these physical interactions with Complainant are not credible.

19. After Complainant informed Respondent Sommer through an email dated January 3, 2019 that “very strong vapors have been coming through after you got home,” she requested removal of the “perfumy item from your hallway or apartment area.” (ED’s Exhibit 12). Respondent replied in his email dated January 5, 2019 “*Kireina*

¹⁵ Glen Taka’s statement is not sworn testimony and was not subject to cross-examination.

¹⁶ On cross examination, Respondent’s counsel suggested that the Japanese word “*san*” was a term of endearment. It is not. Rather it is a term of respect. (TR 1 at pages 169-170).

¹⁷ Complainant testified about the sake gift, the clothing that belonged to her late husband which she gave Respondent Sommer were simple acts of kindness and not wanting to simply donate her husband’s clothing but hoped someone else could make good use of the items.

are you ok???...Thinking about you.”¹⁸ At first, Complainant dismissed Respondent Sommer’s use of the terms as “simply being friendly.” (TR 1 at page 43).

20. On January 14, 2019, Complainant Knipe reminded Respondent Gary Sommer to replace the propane tank on the following day. Respondent Sommer replied “Domo arigato KIREINA” followed by a happy face emoji. (ED’s Exhibit 14).
21. In a March 19, 2019 text message from Respondent Sommer to Complainant: “PS your new hairstyle looks *genki* (smiling emoji) youthful and pretty.”¹⁹ (ED’s Exhibit 19). Complainant testified that she felt “awkward” as she believed Respondent Sommer to have a lady friend whom he had referred to as his “concubine.” (TR 1 at page 49). (ED’s Exhibit 20).
22. In a text message dated April 4, 2019, Complainant informed Respondent Sommer about vapors entering her unit causing chest tightness, sinus pressure and eye soreness and requested that he close his doors. In response Respondent Sommer texted back: “I’ll do anything for you, anything.” (ED’s Exhibit 22). Reading this text, Complainant felt “very uncomfortable.” (TR 1 at pages 50-51).
23. In a text dated May 1, 2019, Respondent Sommer inquired if Complainant needed anything from Costco and added, “PS coming from a middle-aged Caucasian male, Japanese women do get better with age like fine wine or sake.” (ED’s Exhibit 24). Complainant testified that she felt Respondent Sommer’s statement was “inappropriate” and she felt “very uncomfortable.” (TR 1 at page 51).

¹⁸ “*Kireina*” means “beautiful” in the Japanese language.

¹⁹ Complainant testified *genki* means well, vibrant, healthy. (TR 1 at page 49).

24. This was followed by a text message dated May 4, 2019 to Complainant: “Hi junko (sic) I’m sure you must be wondering by now???..and the answer is yes I am attracted to older Japanese women. Sometimes I’m alone in my shop at night lonely and wishing that I had a sweet soft and fresh Japanese woman like you to hold close. Would you possibly consider someday teaching this middle-aged fragrance-free Caucasian male the finer points of properly handling a Japanese woman?” (ED’s Exhibit 25). Complainant testified that she felt “uncomfortable” receiving such a message and that she felt it was “not appropriate.” (TR 1 at pages 51-52).
25. The very next day in a text dated May 5, 2019, Respondent Sommer stated: “I figure since you have seen my Japanese cougar DVDs from Tokyo and told me that you are no angel...well neither am I. The fact of the matter is that I have no woman. I simply said that I did so you wouldn’t think that I was a total nerd. However my plan to (sic) semi-retire in my sixties and find a woman to have my son is true. Just an FYI [wink emoji].” (ED’s Exhibit 26). Complainant felt “uncomfortable” and believed it to be inappropriate for Respondent Sommer to share his feelings with Complainant who was merely a tenant. (TR 1 at pages 52-54).
26. Respondent Sommer continued to send texts referring to Complainant’s physical appearance. On May 7, 2019, Respondent stated: “PS in the future please do not run yourself down telling me how old and saggy you are. Because I find you desirable [smile emoji] not it’s not how young you are...but how really old that you aren’t.” (ED’s Exhibit 27). Reading this, Complainant testified that she felt “very uncomfortable.” (TR 1 at page 55). Complainant had made that statement about her

physical appearance in an effort to deflect Respondent Sommer's interest in her.

(TR 1 at page 55).

27. Two days later, on May 9, 2019, Respondent referred twice to Complainant as "Kireina" and added, "You needn't be afraid to show your soft side to me. I'm not that kind of male that could advantage or try to manipulate you. Just an FYI aloha [wink emoji]...I understand, sleep well Kireina." (ED's Exhibit 28).
28. In a text dated May 10, 2019 and May 11, 2019, Respondent assured Complainant stated: "I'll do my very best for you." "Domo arigato for all that you do for me...cuz I'd do anything for you." (ED's Exhibits 13, 29 and 70).
29. Respondent Sommer continued to assure Complainant that he cared about her and her condition. On May 21, 2019, Respondent Sommer stated, "Kireina I do care about you." (ED's Exhibit 30). On May 22, 2019, Respondent texted Complainant explaining that he did not cut the grass every week "out of respect to you, because I know how the gas and exhaust fumes adversely effect (sic) you." (ED's Exhibit 31).
30. On May 23, 2019, Complainant volunteered again to weed the subject property and to use vinegar and water to avoid the use of pesticides and requested that Respondent Sommer not use any chemicals without advance notice. (ED's Exhibit 32).
31. In her May 24, 2019 text, Complainant described suffering from a "throbbing headache and other reactions" as a result of strong odors and fumes coming into her unit. (ED's Exhibit 33).
32. Weeks later on July 2, 2019, Respondent Sommer texted Complainant and stated he would "insist that you come live with me before I'd allow you to become a

homeless person...PS thank you for not covering your pretty face with that mask. And that night you were wearing was very lovely like yourself...it makes me feel good to know that you feel comfortable around me at last now that you know me better [wink emoji]." (ED's Exhibit 35).

33. Respondent's text on July 10, 2019 to Complainant, stated, "PS Monday night I finally received that belated voicemail you sent...Soo (sic) I saved a voicemail because I like hearing your voice from time to time [smile emoji]." (ED's Exhibit 36). Reading this, Complainant testified that she felt "very uncomfortable." (TR 1 at page 59).

34. In a text dated July 31, 2019, Respondent Sommer informed Complainant that when a friend at work had asked about her. Respondent Sommer replied, "I merely stated that she's a friend from Japan from the country living pure simple and healthy" followed by a smiley face emoji. Complainant testified this made her "uncomfortable" and "upset" as Complainant merely wished to be referred to as a tenant. (ED's Exhibit 37; TR 1 at page 60).

35. On or about August 13, 2019 Mary Love Realty ("MLR") entered into an agreement with Respondents to manage Complainant's unit.²⁰ (ED's Exhibit 102). Thereafter, a new lease agreement was signed with instructions that all issues and communications needed to be reported directly to MLR. (ED's Exhibit 103). Complainant informed MLR of the 2018 sewer odor issues and that she preferred that herbicides not be sprayed on the subject property but if necessary that one week's notice be given. (ED's Exhibit 52).

²⁰ The hiring of the Mary Love Realty company appears to have been Respondent Pritchard's idea. (ED's Exhibits 39 and 92; TR 1 at page 99).

36. During a visit in August 2019, Complainant informed Respondent Pritchard that Respondent Sommer had failed to pay the \$1,800 that was promised to her for enduring the sewage odors from May to August 2018. Fearing retaliation, Complainant did not inform Respondent Pritchard about Respondent Sommer's unwanted sexual advances and other sexual conduct. (ED's Exhibit 5). (TR 1 at pages 83-84). Nor did Complainant inform MLR about Respondent Sommer's unwanted sexual advances and other sexual conduct as she felt MLR would side with the owner. (TR 1 at pages 83-86).
37. During Respondent Pritchard's visit, Respondents Sommer and Pritchard agreed to inspect Complainant's unit. Complainant waited for hours without hearing anything. When Respondent Sommer arrived, he kissed Complainant's forearm like a "Bugs Bunny." (TR1 at page 176 – 177; TR 1 at pages 9-11). Respondent testified that he kissed Complainant's hand in an effort to "console her and calm her down." (TR 2 at pages 61-62).
38. On October 14, 2019, while in Respondent Sommer's unit, Complainant again requested the \$1800 payment previously promised. Respondent replied that he would pay her the money if she allowed him to kiss, touch, and massage her. (TR 1 at pages 63-67). Complainant felt so upset, humiliated, and degraded that had she lived in the time of the samurai, she would have used her *katana* sword and slayed him on the spot. (TR 1 at pages 68-69). During this visit, Respondent Sommer pestered Complainant to test his new bed. (TR 1 at pages 64-65). Respondent Sommer dimmed the lights and offered Complainant fruit wine. Complainant asked

the lights to be turned back on and then left as soon as possible. (TR 1 at pages 63-73).

39. The following day, Respondent, realizing his behavior was unacceptable, apologized for his conduct in a text message stating, “I did not mean to frighten you...I am sitting down and composed right now so I will explain. I get pleasure by giving pleasure. Meaning I can kiss a woman from head to toe using only my hands and mouth. Keeping my (*inkei*) concealed at all time.”²¹

I’m not the kind of man that must have that. I like to do slow gentle body massage with coconut oil. And if a woman asked me to stop at any time I will do so immediately. Now that you know the real me and my future aspirations I want to thank you for spending time talking and listening to me. My current dream is to be passionate with a beautiful woman again...someday...[smile emoji].” (ED’s Exhibit 40). Upon receiving this text message, Complainant felt “extremely sick” and found Respondent Sommer’s behavior to be “despicable.” Complainant testified that later she realized that Respondent’s behavior was all a “façade” and that Respondent Sommer really did not care for her but only wanted sexual favors. (TR 1 at pages 69-70).

40. On October 29, 2019, Respondent texted Complainant addressing her as “Kireina” and then attached a photo of himself as young child, stating, “Who’s this Punk?...It’s me...who’d ever think that this little guy would someday want to kiss a beautiful woman’s *omanko* [smiley emoji].”²² (ED’s Exhibit 44). Complainant again

²¹ *Inkei* is a vulgar word for penis in Japanese similar to “cock” and “dick.” (TR 1 at page 69).

²² *Omanko* is considered a vulgar word for vagina in Japanese similar to “cunt,” “pussy.” (TR 1 at page 72).

felt very sickened and disgusted as this is an extremely vulgar term for a woman's vagina. Complainant testified: "We don't even utter this word. We don't. And we don't write." (TR 1 at page 72).

41. On December 23, 2019 Respondent Sommer took Complainant to shop at Costco. During the car ride, Respondent Sommer inquired if Complainant was available now that she was a widow and stating that since it had been a while since her husband passed and that she must be interested in someone." Respondent Sommer persisted by stating, "You know you need someone to give you a good massage. No possibility for me down the road?" (TR 1 at page 73). Complainant again rejected the offer and informed Respondent Sommer that she does not need anyone and was not interested in him. (TR 1 at pages 73-74). Complainant testified that two months later Respondent Sommer is still "coming on to me." "I was really mad at him for degrading me to that level....it made me feel like I'm a one-night stand or...like a prostitute." (TR 1 at page 74).
42. In the hopes of fending off Respondent's unwanted unwanted sexual advances and avoiding retaliation, on December 26, 2019, Complainant informed Respondent Sommer that she was dealing with a small brain tumor which he acknowledged in a text dated December 29, 2019. (ED's Exhibit 48; TR 1 at pages 80 - 83).
43. However, Respondent Sommer continued making comments about Complainant's physical appearance: "Good morning sunshine...now that I understand why you are homebound if you need something from the store let me know? PS that Japanese tourist girl get up that you wore again Monday night complete with (baseball cap) makes you look even younger [smile emoji]." (ED's Exhibit 47). Complainant

testified that Respondent Sommer's choice of words "did not make me feel comfortable." (TR 1 at pages 79 - 80).

44. On December 29, 2019, in a text message to Complainant, Respondent Sommer apologized for "coming on to you in the past", explained that he didn't realize her health was "poor and frail", and stated that he wanted to make her tenancy "as nice and pleasurable" as he could. (ED's Exhibit 48). Complainant testified that the text made her feel "strange" and wondered what Respondent Sommer meant by the word "pleasurable," especially in light of his previous conduct. (TR 1 at page 80).
45. Despite such reassurances, Respondent Sommer then embarked on a campaign to drive Complainant from the premises. In his testimony, Respondent Sommer admits sending Complainant harassing texts. (TR 2 at page 65). Further, Respondent Sommer sprayed chemicals which he knew would adversely affect Complainant's health, prevented access to her personal property in the locker area of the laundry room, removed her personal property without permission and invaded her personal space. Specifically on January 17, 2020 Respondent Sommer sprayed herbicide on the subject property without providing advanced notice. (TR 1 at pages 100-101). On February 12, 2020, Complainant inquired if Respondent Sommer had been informed by MLR of her request for a one-week notice prior to spraying any chemicals on the property. Respondent Sommer stated that he would spray "by instinct" instead of following any previously agreed upon procedure. (ED's Exhibit 84; TR 1 at page 105). Later in their conversation, Respondent Sommer became agitated and stated that he was not going to take "anymore of this BS. If you want it that way, end of the month you're gonna move." (ED's Exhibit 84). Respondent

Sommer instructed Complainant to notify him when she found other house, and recommended that she hire movers to move all her “junk.” (ED’s Exhibit 84). On February 25, 2020 Respondent posted a notice on Complainant’s front door informing that he would spray herbicide that day. Complainant returned home, found the note and Respondent Sommer then verbally informed her that he would begin spraying in ten minutes. (ED’s Exhibit 84). (TR 1 pages 104-110).

Complainant was then forced to gather her personal belonging and leave the property to avoid any adverse health issues. On May 19, 2020, despite knowing that Complainant was home, Respondent Sommer sprayed herbicide around the subject property resulting in adverse health effects. Complainant testified that all this made her “extremely angering (sic).” (TR 1 at pages 114-116).

46. In a July 7, 2020 text, Respondent Sommer apologized to Complainant for his “past behavior,” made excuses for his behavior and offered “to make things right,” one month of free rent “for the money I promised you,” along with a second month of free rent “for the trouble I caused you.” (ED’s Exhibit 51).
47. On August 20, 2020, Respondent Sommer entered Complainant’s lanai without permission. (ED’s Exhibit 55; TR 1 at pages 119-121). Complainant testified she found this to be “very disturbing.” (TR 1 at pages 120-121).
48. On August 27, 2020 Respondent Sommer changed the locks on the shared storage space without notice to Complainant and without providing her a key, preventing access to her personal belongings. (ED’s Exhibit 56; TR 1 at pages 121-123). Four weeks later, Respondent Sommer ended up removing the door completely. (TR 1 at page 122). In addition, Complainant’s belongings were “contaminated” by some

kind of spray. Complainant found this to be “vicious retaliation.” (TR 1 at pages 126 and 135).

49. Respondent Sommer also began spraying chemical substances in the shared laundry room without notice resulting in Complainant suffering adverse health effects. (ED’s Exhibit 57; TR 1 at pages 124-127). Respondent Sommer admitted to spraying chemicals in the laundry room. (ED’s Exhibit 5 at page 10).
50. During the month of September 2020, Complainant observed chemical coatings on her belongings and clothing that were in the laundry room. (TR 1 at pages 124-126).
51. On September 22, 2020, Respondent Sommer removed shelving from the laundry room and moved Complainant’s items from the shelving onto the laundry room floor without notice which Complainant removed the following day. (ED’s Exhibit 65; TR 1 at pages 134-136).
52. MLR sent a violation notice to Complainant on October 1, 2020 warning that she had ten (10) days to remove her items otherwise she would be subject to termination of her lease. Soon thereafter, Complainant also received a “75 DAYS NOTICE TO VACATE” from MLR stating that Respondent Peter Pritchard intended to move in at the end of the year, i.e.at the end of 2020. (TR 1 at page 137). Although claiming that Respondent Pritchard and his wife would move into Complainant’s unit, when Respondent Peter Pritchard and his wife Sharon stayed at the property, they would occupy the Russian Room which was located above Complainant’s unit and which remained available. (TR 1 at page 138). To date, however, Respondent Pritchard has not moved back to the subject property or even

to the State of Hawai'i as evidenced by Respondent Pritchard's mailing address found in Exhibit A.

53. At about the same time, Respondent left a box of chemicals outside the garage area which he labeled with the Japanese character for "poison," and placed a sign above the garage storage door stating, "Sayonara," meaning "goodbye" in Japanese. (ED's Exhibit 66; TR 1 at pages 141-142). Complainant testified that she believed Respondent Sommer was being sarcastic. (TR 1 at pages 141-142).
54. On October 1, 2020, Respondent Sommer left a handwritten note for Complainant stating that he would "continue to honor and cherish these items of clothing while thinking about "you" every time I wear them... (ED's Exhibit 74). Complainant testified that when she found the note, she felt "very disgusted" and "it was disturbing" to her. "It was just despicable." (TR 1 at pages 143-144).
55. On or about November 19, 2020 Respondent Sommer left a handwritten note sating: What "you" do comes back to you sooo...I will simply say "good luck" when you get back out there into society again after 6 /2 years...peace and love...stay safe aloha...I have done nothing to harm you...I've only shown you love and kindness...for trying to hurt me like this...you will be reckoned with by the higher power...in due time...god bless you...Do not try to cover up these facts!!!!" (ED's Exhibit 73). Complainant testified that she found this note "disturbing" and Respondent Sommer's thinking was "rude" and "atrocious." (TR 1 at pages 145-146).
56. On December 7, 2020, Respondent Sommer left another intimidating and threatening handwritten note: "You are accusing me of being a dangerous criminal

!! and here in America that is considered “slander” and “defamation” of character which is grounds for a countersuit \$\$\$!...I have concrete evidence “facts” and “proof” of what you have done to me! over the past 6 years...and my only “crime” was falling in love with you...this act will render you a negative record for life...I cared about you ...as I told you the time before last when I drove you back from Costco...its (sic) a “double edged (sic) sword” and works both ways here!...I’ve been a prisoner in my own home because of you, however with the countersuit they will most likely work with you so that you can pay it off “overtime”...you have “choices” “options” and “subsequent consequences”...so good luck when you get back out there again!...”the choice is yours”...your dirty old landlord gary. (sic)” (ED’s Exhibit 72). Complaint testified she felt Respondent Sommer was attempting to intimidate her by stating he would file a lawsuit in the hopes that she would drop her HCRC complaint which was initially filed on June 26, 2020. (TR 1 at page 149-150).

57. Respondent Sommer continued to leave handwritten notes addressed to the Complainant. ED’s Exhibit 76 says “good little girl” followed by a smiley face. Complainant testified that she found this note “insulting.” (TR 1 at page 150). On February 5, 2021, Respondent Sommer stated that Complainant would “always” be in my heart...” (ED’s Exhibit 77). Complainant testified that upon reading the note, she felt “very sickening and disturbing.” This note made no sense to Complainant as to why Respondent Sommer would continue to express such feelings when he was clearly focused on driving her from the property. (TR 1 at page 151). Further, Respondent Sommer blocked Complainant’s access to water from the faucets

preventing her from doing laundry. Respondent Sommer went so far as to grind off the water faucet handle. (TR 1 at pages 155-158).

58. Complainant testified that she saw a psychologist to help her through this period. (TR 1 at pages 160-161).

59. In an undated transcription of an interview with Max Crispo, another tenant, when asked if he was aware of Ms. Knipe's "medical requirements," he responded: "Personally she shared with me that she had MCS disorder. And with that diagnosis comes a number of issues that I am aware of." When asked if his knowledge was based on his professional experience, Mr. Crispo replied: "Yes. She told me and I knew about (sic). I have had clinical exposure and had a patient here or there with that." (ED's Exhibit 93).²³

60. In response to being questioned about whether Ms. Knipe complained about sexual harassment, Mr. Crispo responded "She did mention something at one point. One of the last times we spoke she listed all of the things she said and one of them was sexual harassment." (ED's Exhibit 93).

61. With respect to Respondent Sommer's adherence to SOMMER'S HOUSE RULES, Mr. Crispo responded: "GS (Gary Sommer) was very clearly violating those same rules I was asked to follow." "For sure they were spraying the laundry room. I did smell it and you could see droplettes (sic) on the ground."²⁴ GS would work until midnight then come home and get showered and do laundry or spray febreeze (sic) or deodorizer on his clothes. Then late at night when I would be getting ready for

²³ It is unclear what Max Crispo's profession was but there is a reference to him as a naturopath doctor. (TR 1 at page 89). There is a reference to Max Crispo's tenancy during the time MLR was the agent which had to be after August 13, 2019 when Respondents Sommer and Pritchard engaged MLR as the managing agent.

²⁴ ED's Exhibit 87.

bed and then I would smell overpowering perfume smells wafting up from down below.” (ED’s Exhibit 93).

62. In a transcribed interview of a telephone conversation between Respondent Peter Pritchard and H. McVay dated January 22, 2021, Respondent Pritchard testified that he “told Gary to just hire MLR to handle Complainant’s unit so that the complaints and requests would go through MLR rather than to have Gary deal with them. When asked what Respondent Pritchard knew about Complainant’s condition, he responded “She’s got a sensitive nose. She can smell anything. Its (sic) like ridiculous, how can you take care of your property.” When asked if Respondent Pritchard was knowledgeable in accommodating a disability, he replied, “To be honest, no. I know if someone has a problem you try to help them out and stuff. As far as taking care of someone with a disability, I would say go and get some help.” When asked about what Complainant Junko was seeking, Respondent Pritchard replied, “She wants a million dollars and to live there for free.” At the end of the interview, Respondent Pritchard stated, “I just think that Cp (Complainant Knipe) wants a cash cow.” (ED’s Exhibit 92).
63. On or about February 5, 2021 Complainant vacated the subject property. (TR 1 at page 141). Complainant testified that she had difficulty finding other rentals as this was during the Covid pandemic period. (TR 1 at pages 158 -160).
64. Despite leaving, Respondent Sommer continued his retaliatory conduct until October 2022 by continuing to send threatening and harassing emails which made Complainant feel very disgusted. (TR 2 at page 18-19). On the advice of counsel, Complainant finally blocked Respondent Sommer’s number. To this day,

Complainant feels traumatized by what occurred. Although not having been a victim of domestic violence, Complainant feels that she faced a similar environment of being scared and intimidated. (TR 1 at pages 159-161). Complainant even sought counseling from a psychologist to help her through this time. (TR 1 at pages 160-161).

III. CONCLUSIONS OF LAW²⁵

A. JURISDICTION

Respondents Sommer and Pritchard were the owners, operators, and managers of the subject property and subject rental unit at 78-6618 Mamalahoa Highway, Holualoa, Hawaii 96725 and engaged in a real estate transaction within the meaning of H.R.S. Sections 515-2 and 515-3 and HAR Sections 12-46-305 and 12-46-216 during all relevant times.

The subject unit is a “housing accommodation” within the meaning of Sections H.R.S. Section 515-2 and HAR Section 12-46-302.

Respondents and Complainant entered into a rental agreement. Complainant timely filed her complaint alleging Respondents Sommer and Pritchard discriminated against her due to her disability. Further Respondent Sommer created a hostile environment through sexual harassment and subsequent retaliation. Therefore, the Commission has jurisdiction to hear this complaint under H.R.S. Sections 368-3 and 515-9.

B. COMPLAINANT SUFFERED FROM A DISABILITY

H.R.S. Section 515-2 defines “disability” to mean:

....having a physical or mental impairment which substantially limits one or major life activities, having a record of such an impairment, or being regarded as having such an impairment.

²⁵ To the extent the Conclusions of Law also contain Findings of Fact, they shall be deemed findings of fact.

Complainant's testimony regarding her MCS condition is credible. Her symptoms include severe headaches, palpitations, and nausea. She also suffered "eye burning," sinus and ear pressure and shortness of breath to the point of "becoming an invalid."

The record is replete with Complainant's texts, letters, and emails describing her symptoms to Respondents Sommer and Pritchard and later MLR, as the managing agent. All acknowledged Complainant's MCS condition.²⁶

C. RESPONDENTS FAILED TO REASONABLY ACCOMMODATE
COMPLAINANT'S DISABILITY

H.R.S. Section 515-39(9) states in relevant part:

It is a discriminatory practice for an owner or any other person engaging in a real estate transaction...because of disability...

(9) To refuse to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a housing accommodation....

Respondent Sommer initially accommodated Complainant's request to create a fragrance-free environment by posting Sommer's House Rules addressing the usage of fragrance-free products, especially in the laundry room. Respondent Sommer even changed the personal hygiene products he used because he testified that he cared about Complainant and would do anything for her.

²⁶ In her interview, Andrea DeMello, who was the managing agent for MLR, stated she was aware of Complainant's condition and researched it on the internet. She noted that "there is debate as to whether it is a true symptom or not." However, courts have held that a fragrance sensitivity is considered a disability under the American with Disabilities Act regardless of the debate as to whether certain chemicals are the triggering cause of the symptoms. See *McBride v. City of Detroit*, Case No. 07-1274 (E.D. Mich. November 28, 2007).

Complainant's requests to accommodate her disability were straightforward. Sommer's House Rules were an appropriate and reasonable accommodation, or would have been, had they been followed, sincerely and consistently. They addressed the usage of fragrance-free products, especially in the laundry room, Complainant's request to be notified about the spraying of herbicides and pesticides in advance is simple and not onerous.²⁷ Complainant even took it upon herself to do the weeding and using vinegar as an herbicide as an alternative to the spraying.

Respondent Sommer was informed of the sewer pipe leakage problem as soon as it occurred in May 2019. Despite Complainant's repeated requests to find the source of the odors, it was only when Complainant herself crawled under her unit and discovered the source of the leak three months after her complaints, that the matter could be resolved. Complainant informed Respondent Pritchard about the sewer matter and Respondent Sommer's promise to compensate her during one of Respondent Pritchard's visit in August 2019.

Respondent Sommer's actions toward accommodating Complainant's requests changed drastically after she rebuffed his sexual advances in 2019. For example, despite Complainant's repeated requests for advance notice of the spraying, Respondent Sommer claimed that he needed to spray "based on instinct" and couldn't be held to any notice requirement. (CITE TO FOF).

Respondent Pritchard likewise was skeptical and irritated at Complainant's MCS condition and the timing of her complaints. He even went so far as to make snide comments concerning Complainant's ulterior financial intentions for filing her complaint with the Hawai'i Civil Rights Commission.

²⁷ Although there can be disagreement as to why one week notice was necessary, the need for sufficient advance notice remains. An appropriate and reasonable accommodation would allow Complainant sufficient time to vacate the premises in order for the smells to abate.

D. RESPONDENT GARY SOMMER CREATED A HOSTILE ENVIRONMENT
BY ENGAGING IN SEXUAL HARASSMENT

Under H.R.S. Chapter 515 the elements of a prima facie case for hostile environment sexual harassment are:

- (1) Complainant being subject to sexual advances, request for sexual favors, or other verbal or physical conduct or visual forms of harassment of a sexual nature;
- (2) the conduct was unwelcome;
- (3) the conduct was severe or pervasive;
- (4) the conduct had the purpose or effect of either: unreasonable interfering with the complainant's use or enjoyment of the premises or creating an intimidating, hostile or offensive environment;
- (5) complainant actually perceived the conduct as having such purpose or effect; and
- (6) complainant's perception was objectively reasonable to a person of the complainant's sex in the same position."²⁸

As to the first element, in 2019 Respondent began actively pursuing Complainant in the hopes of kindling a sexual relationship. Respondent did this through texts, handwritten notes, and verbal communications. The record is replete with evidence of Respondent Sommer's persistent communications in which Respondent Sommer made constant reference to Complainant's ancestry and her age. Communications such as the May 4, 2019 text in which Respondent Sommer stated, "...the answer is yes I am attracted to older Japanese women. Sometimes I'm alone in my shop at night lonely and wishing that I had a sweet soft and fresh Japanese woman like you to hold close. Would you possibly consider someday teaching this middle-aged fragrance-free Caucasian male the finer points of properly handling a Japanese woman?"²⁹

²⁸ William D. Hoshijo, on behalf of the complaint filed by *Elaine M. Bowes v. Michael Kakar*, Dkt. No. 09-001-H-SH (HCRC 2010) (Hearing's Examiner's Findings of Fact and Conclusions of Law) (quoting *Arquero v. Hilton Hawaiian Village, LLC*, 91 P.3d 505, 512-13 (Haw. 2004). See also *DiCenso v. Cisneros*, 96 F.3d 1004, 1007 (7th Cir. 1996) ("a determination of what constitutes a hostile environment in the housing context requires the same analysis courts have undertaken in the Title VII context.").

²⁹ ED's Exhibit 25.

As to the second element, Complainant found Respondent Sommer's overtures to be unwelcomed. Fearing retaliation, Complainant initially tried to ignore Respondent's conduct and then stated that she was suffering from a brain tumor. Despite these efforts, Respondent Sommer persisted until Complainant rebuffed Respondent Sommer's advances, when her fears came true as he engaged in retaliatory conduct as discussed below.

As to whether the sexual conduct was severe or persistent, hearing commissioners and courts have given wide latitude to what constitutes severe or pervasive behavior. "The frequency of the conduct, its severity, whether it is physically threatening or humiliating, whether it is a mere offensive utterance, or whether it unreasonable interference with a real estate transaction or a tenant's living condition."³⁰ It is important to note the power imbalance between the parties. Respondent Sommer was the landlord, with the power to evict Complainant always in the background. Complainant Knipe was not wealthy; an eviction would cause her hardship, especially during the Covid pandemic. When Complainant finally left, she had difficulty finding another rental. (TR 1 at pages 158-160). Given the power imbalance, the number of texts, handwritten notes and behavior, Respondent Sommer's behavior was both severe and persistent.

As to the last three elements, Respondent Sommer's unwanted and vulgar communications concerning Complainant's looks and clothing and his desire to have a romantic relationship, clearly resulted in a hostile and offensive environment. Respondent Sommer described himself to Complainant as someone who would one day grow up with a desire to kiss a woman's *omanko* which is a vulgar term for vagina. (ED's Exhibit 43; TR 1 at page 72). Such explicit language cannot be interpreted, construed or taken any other way than explicit sexual

³⁰ See *Bowes v. Kakar*; see also *Nelson v. University of Hawaii*, 97 Haw. 376, 38 P.3d 95, 109 (2001).

harassment. Any reasonable person would be left with the same interpretation of Respondent Sommer's conduct.

Under H.R.S. Chapter 515, quid pro quo sexual harassment occurs when:

- (1) submission to unwelcome sexual conduct is made either explicitly or implicitly a term or condition of a real estate transaction; or
- (2) submission or rejection of that conduct is used as the basis for a real estate transaction decision affecting a tenant.³¹

On October 19, 2019, Respondent Sommer explicitly engaged in such conduct when he stated he would pay the \$1800 that had been promised as compensation for the months of the sewage leakage smells but only if Complainant engaged in various sexual acts with him: "touch, kiss and a massage." This is explicit quid pro quo sexual harassment on the part of Respondent Sommer. The fact that Respondent Sommer continued to engage in such conduct without encouragement from Complainant is also implicit quid pro quo sexual harassment.

Although Respondent Sommer testified that he has Tourette's Syndrome, there is nothing in the record to indicate that this condition affected his conduct or ability to know about the impact of his communications. Quite the contrary, Respondent Sommer was very aware of the impact of his communications as evidenced by his many apologies for "coming on too strong," "I did not mean to frighten you...I am sitting down and composed right now so I will explain. I get pleasure by giving pleasure. Meaning I can kiss a woman from head to toe using only my hands and mouth. Keeping my (*inkei*) concealed at all time."³²

Based on the documentary evidence and testimony, the Executive Director has proven these six elements beyond a preponderance of the evidence that Complainant was subject to sexual harassment by Respondent Gary Sommer.

³¹ See *Bowes v. Kakar*.

³² *Inkei* is a vulgar word for penis in Japanese similar to "cock" and "dick." (TR 1 at page 69).

E. RESPONDENT GARY SOMMER ENGAGED IN RETALIATION

H.R.S. Section 515-16 (1) provides that it is unlawful to retaliate against a person because the person opposed discrimination or filed a complaint under H.R.S. Section 515. Three elements must be proven:

- (1) Complainant opposed a discriminatory practice;
- (2) Complainant was subjected to adverse action by respondents; and
- (3) A causal connection between the opposition and the adverse action.³³

Complainant Knipe rejected Respondent Sommer's various overtures, communications and conduct all of which amount to sexual harassment. Following Complainant's rejection, Respondent Sommer engaged in relentless conduct to drive Complainant from the property by various means.³⁴

Knowing full well Complainant's disability, Respondent Sommer began spraying herbicides and pesticides without advance notice as Complainant had requested and Respondent Sommer had previously agreed to. Respondent stated he was tired of the "BS."

Max Crispo, a tenant, personally observed Respondent Sommer violating the Sommer's House Rules by spraying unknown chemicals in the laundry room area leaving droplets on the floor. This spraying was done without any notice. (ED's Exhibit 93).

Respondent also changed the locks on Complainant's storage area without notifying Complainant and without providing a key. Respondent Sommer further removed the shelving in

³³ See *Kay Lorraine Bate vs. Research Institute for Hawaii USA, et al*, Docket No. 13-001-E-RH-SH-R, Final Decision and Order dated August 26, 2014.

³⁴ Respondent Pritchard also had a desire to remove Complainant from the property by stating that he and his wife desired to return to the property and Complainant needed to vacate her unit. However, during various previous visit, Respondent Pritchard resided in different units on the subject property. Further, to date Respondent Pritchard has not returned to the property. Unfortunately, without more evidence, this hearing officer cannot find that Respondent Pritchard engaged in retaliatory behavior by a preponderance of the evidence.

the shared laundry room and placed Complainant's personal property on the laundry room floor, informing her to hire movers to move her "junk." Respondent Sommer admitted that he given Complainant the shelf and did not charge any storage fees or rent. (TR 2 at pages 78-79).

Based on the evidence, the Executive Director has proven that once Respondent Sommer finally realized that Complainant was not interested in having a sexual relationship with him, Respondent Sommer engaged in retaliation in violation of H.R.S. Section 515-16(1).

III. RECOMMENDED ORDER

A. COMPENSATORY DAMAGES

H.R.S. Section 368-17 and 515-13 authorizes an award of compensatory damages for any pain, suffering, embarrassment, humiliation, or emotional distress Complainant suffered from Respondents' discriminatory conduct and denial of a disability-based reasonable accommodation. In addition, Complainant suffered sexual harassment and retaliation as a result of Respondent Sommer's conduct.

There is no question that Complainant suffered adverse physical harm that was debilitating to the point, a times, of becoming "an invalid" as a result of Respondents Sommer and Pritchard's actions and inactions from January 2015, to the time Complainant vacated the premises.

Further, Complainant suffered a range of emotions due to Respondent Sommer's sexual harassment conduct which began in 2019 which included feeling disgusted, humiliated, angry, and fearful. Thereafter, Complainant suffered physically and mentally when Respondent Sommer began to engage in retaliatory behavior.

In reviewing other contested hearing cases, compensatory damages for similar complaints ranged from \$75,000 to \$200,000.³⁵ In this case, the award of \$80,000 in compensatory damages against the Respondent Trust and Respondents Trustees Gary Sommer and Peter Pritchard is fair and just.

B. PUNITIVE DAMAGES

The Commission also has the authority to award punitive damages under H.R.S. Section 368-17. The purpose of such an award is to punish a respondent for aggravated or outrageous misconduct, and to deter the respondent and others from similar conduct in the future.

The following factors are to be taken into consideration in determining the amount of punitive damages:

- a) The degree of malice and reprehensibility of the conduct;
- b) The respondent's financial situation; and
- c) The amount of punitive damages that will have a deterrent effect on respondent in light of his financial situation.

In order to award punitive damages, these factors must be proven by clear and convincing evidence.

Here there is no question that the evidentiary burden has been met to prove that Respondent Sommer sexually harassed Complainant and further that his behavior was intentional, deliberate and reprehensible. Complainant testified that she felt "uncomfortable," "disgusted," and made to feel like a "prostitute" when Respondent Sommer stated that he would pay her the compensation he had promised if allowed to touch, kiss and massage her. Once

³⁵ See *Bate vs. Research Institute for Hawaii, USA, et al.* See also *Kiona Boyd v. Jeffrey David Primack*, Docket No. 18-001-H-S, final Decision dated November 30, 2018.

rejected, Respondent Sommer engaged in retaliatory behavior that put Complainant's physical and emotional well-being at risk. Respondent Sommer himself admitted sending threatening and harassing texts and handwritten notes.

However, the only evidence we have of Respondent Sommer's financial condition from employment is that he works at Sack 'n Save earning \$15 an hour. Respondent Sommer is also a co-trustee of the subject property³⁶. The property brings in \$1500 a month. Although no evidence of the value of the property was introduced, a quick review on the internet with such listing services such as Zillow and Reddit, estimates the value of the property to be anywhere from \$757,600 to \$1,201,157 as of January 20, 2025.

A review of other contested hearing cases include a range of \$20,000 to \$300,000 in punitive damages.³⁷ Therefore, an amount of \$15,000 in punitive damages is reasonable in this case.

C. EQUITABLE RELIEF

Pursuant to H.R.S. Section 368-4(5), 368-17, and 515-13, the additional following equitable relief is granted:

1. Respondents' immediately cease and desist from unlaw discriminatory practices on any protected basis in any housing accommodation owned or managed by Respondents or their agents.
2. Respondents' immediately develop and implement a written anti-discrimination in real property transaction policy and procedures, to be approved by the Executive

³⁶ It is unclear if there are any other assets in the trust owned by Respondents Sommer and Pritchard.

³⁷ See *Boyd v. Primack* and *Bate v. Research Institute for Hawaii, USA, et al.*

Director, for any housing accommodation owned or managed by Respondents in the State of Hawai`i, and is ordered to provide a copy of such policy to all applicants and tenants. Respondents shall also conduct employee, supervisory, and managerial training on these policies, including responding to requests for disability-based reasonable accommodations, whether the disability is obvious or not, as well as sexual harassment and retaliation.

3. Respondents issue a public apology to Complainant.
4. Publish a public education advertisement about Hawai`i's housing non-discrimination statute and the Commission in at least one newspaper published in the State of Hawai`i 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 disability discrimination in real estate transactions.
5. Respondents to bear the costs of publishing the results of this contested case, in a press statement provided by the Executive Director, in at least one newspaper published in the State of Hawai`i and having a general state-wide circulation, in such manner and for such time as the Commission may order, but no less than once in the Sunday edition and once in the following week, in order to minimize or eliminate disability discrimination in real estate transactions.
6. Provide such other and further relief as is just and appropriate in the circumstances.

DATED: Honolulu, Hawai`i, January 27, 2025.

A handwritten signature in cursive script, reading "Leslie A. Hayashi".

Judge Leslie A. Hayashi (Ret.)
Hearings Examiner

Copies sent to:
Eric Pililaau, Enforcement Attorney
Gary Sommer, c/o William T. Reece, Jr., Esq.
Peter Pritchard

Hawai'i Civil Rights Commission
Department of Labor & Industrial Relations
State of Hawai'i

Hearing Examiner's Exhibits

Title of Case: Junko Knipe v Holualoa Residence Trust, Gary Sommer, individually,
and Peter Pritchard, individually

Docket No.: DN 24-01-H-D-SH-RET

Numerical Reference	Date Sent/Returned	Description	Objections	Admitted
1.	Sent 6/20/2024 Via Certified Mail	Notice of Docketing of Complaint; Scheduling Conference and Order		To Case File – Signed Certified Return Receipt
2.	Sent 07/18/2024 Via Certified Mail	Stipulated Order To Amend Case Caption		Returned 7-30-2024 "REFUSED"
3.	Sent 7/24/2024 Via Certified Mail	Stipulated Qualified Protective Order		Returned 08/13/2024 "REFUSED"
4.	Sent 7/17/2024 Via Certified Mail	Scheduling Conference Order		Returned 08-19-2024 "REFUSED"
5.	Sent 10/10/2024 Via Certified Mail	Ex Parte Petition For Leave To File and Receive Documents		Returned 11-04-2024 "REFUSED"
6.	Sent 10/25/2024 Via Certified Mail	Notice of PreHearing Conference and Order		Returned 11-12-2024 "REFUSED"
7.	Sent 11/22/2024 Via Certified Mail	Notification of relocation of Pre-Hearing Conference and "Zoom" link/Meeting ID/Passcode		Returned 12-31-2024 "REFUSED"

HAWAI'I CIVIL RIGHTS COMMISSION

STATE OF HAWAI'I

MARCUS L. KAWATACHI,)	DOCKET No.: 24-001-H-D-SH-RET
Executive Director, on)	
behalf of the complaint)	NOTICE OF DOCKETING OF
filed by JUNKO KNIPE)	COMPLAINT; SCHEDULING
)	CONFERENCE AND ORDER
)	
vs.)	
)	
HOLUALOA RESIDENCE TRUST;)	
GARY SOMMER; PETER PRITCHARD,)	<u>Hearings Examiner:</u> Judge Leslie Hayashi
)	<u>Scheduling Conference:</u> July 16, 2024 at
)	9am via Zoom
)	<u>Hearing:</u> November 26, 2024 and following
Respondents.)	days as needed
)	

NOTICE OF DOCKETING OF COMPLAINT

YOU ARE HEREBY NOTIFIED that the complaint in the above-entitled case was docketed on June 17, 2024. This case is tentatively set for hearing before Hearings Examiner Leslie Hayashi during the week of November 26, 2024, and continuing as needed.

All parties have the right to appear at the hearing in person and to be represented by counsel or other representative.

NOTICE OF SCHEDULING CONFERENCE AND ORDER

YOU ARE HEREBY NOTIFIED AND IT IS HEREBY ORDERED:

1. Pursuant to Hawai'i Revised Statutes (HRS) § 368-3 and Hawai'i Administrative Rules (HAR) § 12-46-19, a scheduling conference will be held before Hearings Examiner Hayashi on July 16, 2024 at 9:00 a.m. via Zoom remote conferencing. The link to the scheduling

conference is:

<https://us02web.zoom.us/j/4349599058?pwd=VlpKZDVmZ3MzYit5clJQTElVekhOdz09&omn-86456467743>

Meeting ID: 434 959 9058

Passcode: 514266

+1 253 205 0468 US

2. The purpose of the scheduling conference is to discuss: 1) the alleged facts and issues in this case; 2) anticipated discovery and deadlines for the completion of discovery; 3) anticipated motions and deadlines for the filing and hearing of motions; 4) further proceedings, including setting dates for the prehearing conference and hearing; 5) prospects for mediation and or settlement; and 6) any other matters which may be conducive to the just, efficient, and economical determination of this case.

Parties and/or their representatives are required to attend this conference unless previously excused by the undersigned Hearings Examiner. The parties shall be prepared to report any commitments which would affect the scheduling of a hearing date.

3. The Executive Director shall file and serve upon Respondents a scheduling conference statement by 4:00 p.m. on July 3, 2024. The scheduling conference statement shall set forth the following:

- a) Name of Complainant;
- b) Factual summary of the case;
- c) Claims for relief and statutory basis for each claim;
- d) Theories of liability against Respondent;
- e) Statement of position on compensatory damages;

- f) Statement of position on punitive damages;
- g) Statement of other legal/equitable relief sought; and
- h) Statement on the prospects of settlement.

4. Respondents shall file and serve upon the Executive Director a scheduling conference statement by 4:00 p.m. July 10, 2024. The Respondents' scheduling conference statement shall set forth the following:

- a) Name, occupation, and corporate or other legal status of Respondents;
- b) Factual summary of case;
- c) Defenses to each claim/theory of liability;
- d) Statement of position on compensatory damages;
- e) Statement of position on punitive damages;
- f) Statement of position on legal/equitable relief sought; and
- g) Statement on the prospects of settlement.

Failure to appear at the scheduling conference or to submit scheduling conference statements may result in the imposition of penalties pursuant to H.R.S. § 368-5.

5. After the conclusion of the conference, a written order will be issued which recites any actions taken and any agreements reached by the parties. The order will supersede all prior pleadings and will control the subsequent course of the hearing unless modified to prevent manifest injustice.

6. If parties wish to file and receive documents electronically, please file an *Ex Parte*

Motion for leave to File and Receive Documents Electronically and contact the Adjudications Division for procedures.

Dated: Honolulu, Hawai'i , June 18, 2024.

A handwritten signature in cursive script, reading "Leslie Hayashi".

Honorable Leslie Hayashi
Hearings Examiner

Copies sent to:

Eric Pililaau, Enforcement Attorney
Gary Sommer, c/o William T. Reece, Jr., Esq
Peter Pritchard

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> <p>1. Article Addressed to:</p> <p><i>Peter Pritchard - Holualoa Residence Trust</i></p> <p><i>205 S. Higley Road, Lot 240</i></p> <p><i>Mesa, AZ 85206</i></p>		<p>A. Signature <i>[Signature]</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X <i>[Signature]</i></p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p>	
<p>2. Article Number (Transfer from service label)</p> <p><i>7022 2410 0002 6233 0981</i></p>		<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input checked="" type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery</p> <p><input type="checkbox"/> Insured Mail</p> <p><input type="checkbox"/> Insured Mail Restricted Delivery (over \$500)</p>	

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Peter Pritchard - Holualoa Residence Trust

205 S. Higley Road, Lot 240

Mesa, AZ 85206

HAWAII CIVIL RIGHTS CENTER
830 Punchbowl St. 4th Fl.
Honolulu, HI 96813

Respect

NOV 11 2022
HAWAII CIVIL RIGHTS CENTER
830 PUNCHBOWL ST
HONOLULU, HI 96813



Peter Ritchard
Holualoa Residence Trust
205 S. Higley Road, Lot 240
Mesa, AZ 85206

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NOV 11 2022 10:11 AM
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HONOLULU, HI 96813
DOCUMENT 2

HAWAII CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Rm. 411
Honolulu, Hawaii 96813



*Revised
7/29*

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII

Peter Pritchard
Holualoa Residence Trust
205 S. Higley Road, Lot 240
Mesa, AZ 85206

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8/29*

24 AUG 19 PM 2:30

CIVIL RIGHTS COMMISSION
HONOLULU, HAWAII



Peter Dyrhager
-R-T-S- 852065035-1N 08/13/24
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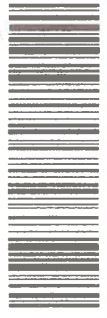
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DOCUMENT 4

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Honolulu, Hawaii 96813

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Peter Pritchard
Holualoa Residence Trust
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Mesa, AZ 85206

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Holualoa Residence Trust
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