

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

MATSUYAMA BROTHERS TRUCKING,  
INC.

Respondent.

CASE NO. OSH 2012-8

ORDER NO. 481

ORDER DISMISSING CONTEST

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On August 29, 2012, the Hawaii Labor Relations Board (Board) convened a trial in this matter pursuant to Order No. 470, Pretrial Order, dated May 8, 2012. Deputy Attorney General Lawrence H. Nakano appeared for Complainant DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS (Director). Respondent MATSUYAMA BROTHERS TRUCKING, INC. (Respondent) failed to appear for the scheduled trial.

Based upon the record, the Board makes the following findings of fact, conclusions of law, and order dismissing the instant contest.

FINDINGS OF FACT

1. On November 30, 2011, the Director, through the Hawaii Occupational Safety and Health Division (HIOSH), issued a Notification of Failure to Abate Alleged Violations to Respondent and its successors. HIOSH imposed additional penalties totaling \$78,000 for the failure to abate violations of 29 CFR 1910.106(e)(9)(iv), 29 CFR 1910.215(a)(4), 29 CFR 1910.22(b)(1), and 29 CFR 1910.244(a)(1)(ii), respectively.
2. By letter dated February 21, 2012, Respondent filed a contest with HIOSH.
3. On March 5, 2012, the DIRECTOR filed the contest with the Board.

4. On March 7, 2012, the Board issued a Notice of Initial Conference/Settlement Conference scheduling the initial conference/settlement conference by conference call on May 7, 2012 at 9:00 a.m. in the Board's hearing room. Respondent's representative was instructed to telephone the Board at the time designated for the conference. Each party was also requested to submit an initial conference statement no later than three business days prior to the initial conference.
5. On May 2, 2012, the Director filed an Initial Conference/Settlement Conference Statement with the Board.
6. On May 7, 2012, the Board held an initial conference/settlement conference in this matter attended by Complainant's counsel Deputy Attorney General Lawrence H. Nakano. Respondent's representative did not appear for the initial conference/settlement conference. The Board attempted to telephone Respondent's representative at her telephone number on file with the Board and left her a message to call back. The Board proceeded with the initial conference/settlement conference and scheduled the trial in this matter on August 29, 2012 at 9:00 a.m. The Board also scheduled June 19, 2012 as the deadline for the parties to file their final naming of witnesses and July 18, 2012 as the discovery cutoff date.
7. The Board issued Order No. 470, Pretrial Order, dated May 8, 2012 which included the foregoing deadlines and trial date.
8. On June 7, 2012, the Director filed his identification of live witnesses.
9. On August 22, 2012, the Director filed a Motion to Dismiss Respondent's Contest (Motion to Dismiss) with the Board on the grounds that Respondent failed to submit an Initial Conference Statement, failed to attend the Initial Conference, failed to submit a final naming of witnesses and failed to take any other action to pursue this contest. The Director contends that he suffered prejudice by Respondent's failure to file an initial conference statement and its identification of witnesses. In addition, the Director contends that Respondent's failure to respond to his counsel's repeated requests to discuss settlement have left the Director with no other option than to seek the dismissal of this contest.
10. On August 29, 2012, the Board convened the trial of the instant contest in its hearing room at approximately 9:20 a.m. Complainant's counsel and witness, Charles Clark, appeared before the Board and Respondent's representative did not appear. The Board noted that on August 28, 2012, its staff telephoned Respondent's representative regarding her appearance at the scheduled trial

and no return calls were received by the Board's staff from Respondent. The Board proceeded to hear the Director's argument on the Motion to Dismiss. In addition to the arguments raised in his written motion, the Director contended that the contest should be dismissed for Respondent's failure to appear at trial.

11. Based on a review of the record and consideration of the Director's argument, the Board finds that Respondent failed to file its Initial Conference/Settlement Conference Statement and its statement identifying its witnesses. In addition, the Board finds that Respondent failed to participate in the Initial Conference/Settlement Conference on May 7, 2012 and failed to appear at the trial scheduled in this matter on August 29, 2012. The Board concludes that Respondent abandoned its contest.

### CONCLUSIONS OF LAW

1. The Board has jurisdiction over the instant contest pursuant to Hawaii Revised Statutes (HRS) §§ 396-3 and 396-11.
2. A party's refusal to proceed with trial is cause for dismissal. In Richardson v. Lane, 6 Haw.App. 614, 736 P.2d 63 (1987), the Intermediate Court of Appeals affirmed the dismissal of the complaint where the plaintiffs failed to appear on the date of trial but defense counsel and the jury panel were present and plaintiff's counsel represented to the court that plaintiffs had instructed counsel not to participate in the proceeding because their rights to a trial by jury and an impartial judge were being violated.
3. Based on Respondent's failure to participate in these proceedings, including its failure to file its Initial Conference/Settlement Conference Statement and its identification of witnesses, its failure to participate in the Initial Conference/Settlement Conference and its failure to appear at the trial of its contest, the Board thus concludes that Respondent thereby abandoned its position of contesting the Notification of Failure to Abate Alleged Violations issued by HIOSH on November 30, 2011 and failed to prosecute its contest.

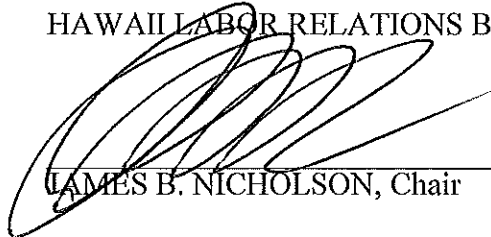
### ORDER

The Board hereby dismisses the instant contest.

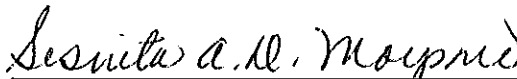
DIRECTOR, DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS v. MATSUYAMA  
BROTHERS TRUCKING, INC.  
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DATED: Honolulu, Hawaii, August 31, 2012.

HAWAII LABOR RELATIONS BOARD



JAMES B. NICHOLSON, Chair



SESNITA A.D. MOEPONO, Member

Copies sent to:

Lawrence H. Nakano, Deputy Attorney General  
Rebecca Kauwe