

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

ASSOCIATION OF OWNERS  
OF KALELE KAI,

Plaintiff,

vs.

HITOSHI YOSHIKAWA;  
DOE DEFENDANTS 1-10,

Defendants.

CIVIL NO. 15-1-0102-01 KTN

DECLARATION OF COUNSEL;  
EXHIBITS G-H

DECLARATION OF COUNSEL

I do hereby declare under penalty of law that the following is true and correct:

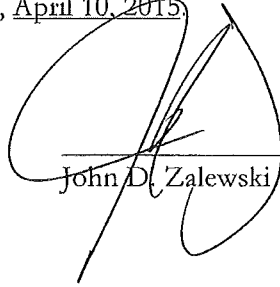
1. I am an attorney and a director of the law firm Case Lombardi & Pettit (“CLP”), licensed to practice law before all courts in Hawaii, and an attorney of record for Plaintiff ASSOCIATION OF OWNERS OF KALELE KAI.

2. Attached hereto as Exhibit G is a true and complete copy of the 1984 Standing Committee Reports of the Senate (241-84) relating to Act 107, S.B. No. 1815-84.

3. Attached hereto as Exhibit H is a true and complete copy of State v. Nakanelua, 2015 WL 260712 (Haw. 2015).

4. In a letter dated March 19, 2014, at pages 2-3, counsel for Hitoshi Yoshikawa, Terrance M. Revere, stated in part (emphasis in the letter), “we will be asserting counterclaims not only against the Association, but against individual board members. [ ... ] **If this letter is ignored by the Board majority, we again respectfully urge all dissenting Board members to please let us know of their opposition so they are not sued for a decision they did not make or agree with.**”

DATED: Honolulu, Hawaii, April 10, 2015



John D. Zalewski

294-22(b)(2)(B) would be a more logical place to insert the proposed amendment and has therefore amended the bill accordingly.

Your Committee on Consumer Protection and Commerce is in accord with the intent and purpose of S.B. No. 2131-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2131-84, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senators Chang, Fernandes Salling, Yamasaki and Soares.

SCRep. 240-84 Consumer Protection and Commerce on S.B. No. 2056-84

The purpose of this bill was to expand the exemption provisions of Chapter 462A, Pilotage, Hawaii Revised Statutes, to include fishing vessels licensed or enrolled under the laws of the United States of America.

During its hearing on the bill, your Committee received oral testimony by the Chairman of the Board of Pilot Commissioners, initially in support of the bill. Your Committee requested further information, which the Chairman supplied, and on the basis of that data concluded that the proposed new language was redundant. Your Committee finds that existing language of Chapter 462A-19, subparagraph (1), covers the proposed new class of exempted vessels, namely, fishing vessels licensed or enrolled under the laws of the United States of America, and has, therefore, amended the bill by deleting the proposed language. A technical change of the original bill substituting "the person" for "his" has been retained.

Your Committee on Consumer Protection and Commerce is in accord with the intent and purpose of S.B. No. 2056-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2056-84, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senators Fernandes Salling, Yamasaki and Soares.

SCRep. 241-84 Consumer Protection and Commerce on S.B. No. 1815-84

The purpose of this bill is to amend Chapter 514A by adding a section which would permit arbitration of any dispute relating to the interpretation, application or enforcement of Chapter 514A.

Your Committee amended the bill by adding new sections to Chapter 514A, Hawaii Revised Statutes, which provide procedures for the proposed arbitration process.

It is the intent of the bill, as amended, to expedite the disposition of certain disputes and, at the same time, protect the constitutional right of any party to due process and trial by a jury.

Specifically, the bill, as amended, includes sections which:

1. Allow for review to determine whether a dispute is suitable for arbitration.
2. Define those disputes which were not suitable for disposition by arbitration.
3. Provide general criteria as to what disputes are suitable for disposition by arbitration.
4. Allow declaratory relief against the insurer for the association of apartment owners to determine whether insurance coverage is available for arbitration.
5. Allow for the awarding of costs and fees by the arbitrator.
6. Provide procedures by which arbitration awards are made and by which such award can be confirmed.
7. Allow a party, at his own expense, to obtain findings of fact and conclusions of law by the arbitrator.

EXHIBIT G

## 8. Allow for appeal of the arbitration award.

Your Committee on Consumer Protection and Commerce is in accord with the intent and purpose of S.B. No. 1815-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1815-84, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senators Fernandes Salling, Yamasaki and Soares.

SCRep. 242-84 (Majority) Consumer Protection and Commerce on S.B. No. 2196-84

The purpose of this bill is to allow brokers to share commissions with brokers who are lawfully engaged in brokerage activities under the laws of a foreign country provided that such broker does not conduct any of the negotiations in this State.

The State Attorney General's office is of the opinion that a Hawaii broker may not split fees with a broker from a foreign country under existing law. A survey of 49 sister states, the District of Columbia, and six Canadian provinces indicates that thirteen states either permit or might permit fee splitting with brokers from a foreign country.

While Hawaii's license law does not permit this type of fee splitting, brokers who have affiliate offices in one of the thirteen states that allow fee splitting could circumvent Hawaii's law by processing transactions with brokers from foreign countries through their affiliate offices. Thus, Hawaii's law places brokers without affiliates in states permitting fee splitting at a disadvantage. This inequity would be corrected by the passage of this bill. In addition, permitting Hawaii brokers to share commissions with brokers from foreign countries would be a recognition of Hawaii's role in Asia-Pacific commerce.

Your Committee made a technical non-substantive change to conform the bill to recommended legislative drafting format.

Your Committee on Consumer Protection and Commerce is in accord with the intent and purpose of S.B. No. 2196-84, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2196-84, S.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Senators Fernandes Salling, Yamasaki and Soares.  
Senator Kawasaki did not concur.

SCRep. 243-84 Consumer Protection and Commerce on S.B. No. 1867-84

The purpose of this bill was to amend certain provisions of the Horizontal Property Regimes Act as follows:

1. Provide for separate metering of utilities. The boards of many condominium projects want to separately meter the utilities provided to each apartment in their project, or to separately meter the commercial units. This desire is motivated by rising utility costs which require substantial maintenance fee increases. This problem is particularly severe in projects with central air-conditioning systems. Substantial savings can be made by separately metering apartments and by making the apartment owners individually responsible for the actual cost of the utilities used by their apartments. However, it is presently unclear whether boards have the power to separately meter apartments. In light of the absence of any statutory provision and the significant initial cash outlay, a number of condominium projects have refrained from separately metering their projects for fear that this investment might be lost in the event of legal challenge.
2. Deletes the requirement that at least one-third of the directors' terms expire annually. Section 514A-82(1), Hawaii Revised Statutes, presently states that the terms of at least one-third of the directors of each condominium association must expire annually. This has been problematic for condominium associations that have attempted to reduce the number of board members to less than nine because of difficulties in obtaining a quorum. The standard number of years served by directors is three