

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case No. SEU-2013-009
)	
BING LONG YEE,)	
)	PRELIMINARY ORDER TO
)	CEASE AND DESIST; NOTICE OF
Respondent.)	RIGHT TO HEARING
)	
)	

PRELIMINARY ORDER TO CEASE AND DESIST

I. **STATEMENT OF APPLICABLE STATUTORY LAW**

Pursuant to the authority granted by Hawaii Revised Statutes (“HRS”) Chapters 485 and 485A,¹ the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawai‘i (“Commissioner”) has conducted a preliminary investigation into the activities of the above-named respondent to determine if he has engaged in any act or practice constituting a violation of HRS Chapter 485, or any rule or order adopted thereunder, or has engaged in or is about to engage in any act or practice constituting a violation of HRS Chapter 485A.

Based on the information revealed during the investigation, the Commissioner has reasonable cause to believe that the above-named respondent has violated HRS Chapters 485 and 485A as follows:

II. **STATEMENT OF JURISDICTION**

The Commissioner has jurisdiction over this matter involving securities as defined in HRS §§ 485-1 and 485A-102.

III. PRELIMINARY FINDINGS OF FACT

1. Respondent Bing Long Yee (“**Respondent**”) is an individual who lived in the states of Hawai‘i and Nevada at all relevant times herein.

2. In or around 1988, Respondent met a 63-year-old individual (“**Investor**”) at a restaurant in Honolulu, and the parties became friends.

3. Investor was a resident of the State of Hawai‘i at all relevant times herein.

4. During the parties’ first meeting, Respondent represented to Investor, among other things, that he was a wealthy owner of multiple large properties in Canada that he had inherited from his family.

5. In telephone conversations that took place thereafter, Respondent represented to Investor, among other things, that he had returned home to Canada, that he was involved in various business ventures including exporting Jade stone from China, investing in a restaurant start-up on the island of Kauai, selling his property to the Chinese government, and assisting a friend named “John Sabalinski” sell his Canadian properties; and that, if Investor furnished funds to help fund Respondent’s business ventures, he would return to Investor a substantial portion of his business profits or name Investor as a beneficiary in his will—in either case, in an amount greater than any value invested in Respondent (“**Investment Program**”).

6. Contrary to the foregoing representations, however, Respondent had not moved to Canada; was not involved in exporting Jade stone from China; was not investing in any restaurant start-up on Kauai; did not own, was not in the process of selling, and was not helping anyone else sell real estate in Canada; and was not otherwise involved in any business venture.

¹ HRS Chapter 485 was replaced by HRS Chapter 485A on July 1, 2008.

Instead, Respondent had moved to Las Vegas, Nevada, was living with his girlfriend or at a casino-hotel, and was gambling at casinos.

7. When Investor expressed interest in the Investment Program, Respondent pretended to introduce Investor by telephone to John Sabalinski (“**Mr. Sabalinski**”), Jason Wong (“**Mr. Wong**”), and Jeffrey Dahill (“**Mr. Dahill**”). In actuality, “Mr. Sabalinski,” “Mr. Wong,” and “Mr. Dahill” were three of at least 13 fake identities that Respondent created and assumed at various times when speaking with Investor. Respondent would alter his voice to pretend to be “Mr. Sabalinski,” “Mr. Wong,” and “Mr. Dahill” on the phone, and Investor would not realize that she was speaking to Respondent.

8. “Mr. Sabalinski” (Respondent) represented to Investor that he was a “land rich, cash poor” surgeon living in Edmonton, Canada, owned \$25 million of Canadian real estate that he was in the process of selling, and that, if Investor invested in Respondent’s Investment Program, he would also return to Investor a substantial portion of his business profits or name Investor as a beneficiary in his will in an amount greater than any value she furnished.

9. “Mr. Wong” (Respondent) represented to Investor that he was an attorney, helping Respondent collect investment monies for the Investment Program.

10. “Mr. Dahill” (Respondent) represented to Investor that he was a friend who had invested in the Investment Program and was assisting Respondent collect additional investment funds.

11. On numerous occasions thereafter, Respondent, “Mr. Sabalinski,” “Mr. Wong,” and “Mr. Dahill” discussed the details of the Investment Program with Investor and solicited funds for investment.

12. From 1990 through about August 2009, in reliance on the representations of Respondent, “Mr. Sabalinski,” “Mr. Wong,” and “Mr. Dahill,” Investor began furnishing funds to Respondent by regular mail, wire transfer, or Western Union for investment in the Investment Program.

13. A portion of the funds were collected by Investor from 10 friends who were also senior citizens. Respondent knew that Investor was collecting funds from her friends in order to invest in the Investment Program and spoke or offered to speak, directly or through his supposed attorney, about the details of his various business ventures to at least three of Investor’s friends.

14. From about August 2009 through February 2013, Respondent called Investor while pretending to be one of 10 different attorneys. Each “attorney” (Respondent) represented to Investor that “Mr. Sabalinski” had died on August 13, 2009; that “Mr. Sabalinski” had left Investor \$3.5 million in his will; and that there were fees associated with administering Mr. Sabalinski’s estate that needed to be paid in order for Investor to receive her inheritance (“**Sabalinski Estate Fees**”). Each “attorney” then solicited additional funds from Investor for payment of the Sabalinski Estate Fees.

15. In reliance on the “attorneys’” representations, Investor furnished funds by regular mail, wire transfer, or Western Union to various individuals in Las Vegas who were purportedly assisting the “attorneys” with collecting the funds for payment of the Sabalinski Estate Fees. Investor believed that she would finally receive her Investment Program returns.

16. Unbeknownst to Investor, however, the individuals who received her funds were either the son of Respondent’s girlfriend (“**J.D.**”) or employees of a Las Vegas casino where Respondent gambled.

17. Contrary to Respondent's representations, neither J.D. nor the casino employees were aware of a "Mr. Sabalinski"—much less, collecting funds for payment of the Sabalinski Estate Fees. Respondent had represented to them that he was a U.S. Marine Corps veteran who needed assistance receiving pension funds from his bank manager in Hawai'i. As a favor to Respondent, J.D. and the casino employees received funds via regular mail, wire transfer, and/or Western Union and delivered those funds to Respondent, believing that any and all funds they received and delivered were Respondent's pension disbursements.

18. By February 2013, Investor had furnished to Respondent a combined total of \$1,414,145 for investment in the Investment Program. \$440,075.00 was from Investor, and the remaining \$974,070.00 was collected from Investor's friends. Investor believed that all of the funds were being invested as represented by Respondent and that she, and thus her friends, would receive a valuable financial benefit in return.

19. None of the funds, however, were ever invested into the Investment Program.

20. Instead, without Investor's knowledge, authority, or consent, Respondent spent the entire \$1,414,145 on personal living expenses and gambling at Las Vegas casinos.

21. To date, Respondent has not returned any money to Investor.

22. The Investment Program that Respondent sold to Investor satisfied the elements of an investment contract insofar as:

a. Investor furnished value totaling \$1,414,145, which she pooled from her own funds and those of her friends, to Respondent for investment in the Investment Program;

b. All of the capital furnished was at risk of suffering a loss if the Investment Program failed;

c. Investor was induced to invest her pooled funds based on Respondent's promises, guarantees, and representations that doing so would result in a valuable benefit to Investor beyond the initial value paid; and

d. Neither Investor nor her friends were involved or intended to be involved in the management of Respondent's business ventures, much less, actively involved in a meaningful way.

23. The Investment Program was not registered as securities with the Office of the Securities Commissioner.

24. Respondent effected and attempted to effect the sale of the Investment Program to Investor and was paid or given commission or other remunerations in connection with the sales, as evidenced by his personal use of the invested funds. However, Respondent did not register himself as a securities salesperson or agent with the Office of the Securities Commissioner.

25. In connection with the offer and sale of the Investment Program, Respondent made the following untrue statements of material fact and material omissions to Investor and, as a result of, but not limited to, the following misrepresentations and omissions, induced Investor into investing with Respondent:

a. Respondent represented that he lived in Canada and owned multiple parcels of Canadian real estate. In fact, Respondent was living in Las Vegas, Nevada with his girlfriend or at a casino-hotel and did not own any real estate in Canada.

b. Respondent represented to Investor that he was involved in various business ventures including exporting Jade stone from China, investing in a restaurant start-up on the island of Kauai, selling his Canadian properties, and assisting a friend sell

his Canadian properties. Respondent was not involved in any of these ventures. Instead, Respondent gambled at Las Vegas casinos.

c. Respondent represented that any money invested in the Investment Program would yield Investor a financial benefit. However, the Investment Program did not actually exist. Thus, no investment returns were generated from the Investment Program.

d. Respondent represented that an attorney named "Mr. Wong" was helping him collect investment monies for the Investment Program. In fact, "Mr. Wong" was one of the many false identities that Respondent created and assumed when soliciting funds from Investor.

e. Respondent represented that a friend named "Mr. Dahill" had invested in the Investment Program and was helping Respondent collect additional investment funds. In actuality, "Mr. Dahill" was another false identity that Respondent created and assumed when soliciting funds from Investor.

f. Respondent, while pretending to be "Mr. Wong" and "Mr. Dahill," represented that Investor's funds were being used to support Respondent's alleged business ventures. In reality, Respondent had used the funds on personal living expenses and gambling at Las Vegas casinos.

g. Respondent represented that a friend named "Mr. Sabalinski" was in the process of selling his properties. Like "Mr. Wong" and "Mr. Dahill," however, "Mr. Sabalinski" was a fake identity that Respondent created and assumed when soliciting funds from Investor.

h. Respondent, while pretending to be “Mr. Sabalinski,” represented that any money invested in the Investment Program would yield Investor a financial benefit. Because the Investment Program did not actually exist, no investment return was generated for Investor.

i. Respondent, while pretending to be various attorneys, represented that “Mr. Sabalinski” had died, that “Mr. Sabalinski” had left Investor \$3.5 million in his will, and that the Sabalinski Estate Fees needed to be paid in order for Investor to receive her inheritance. All of these statements were false. “Mr. Sabalinski,” his will, and the Sabalinski Estate Fees were completely fictional. Investor had not inherited anything from “Mr. Sabalinski.”

j. Respondent, while pretending to be various “attorneys,” instructed Investor to send payment for the Sabalinski Estate Fees to various individuals in Las Vegas and represented that these individuals were assisting the “attorneys” with collecting funds for payment of the fees. These individuals, however, were either J.D. or employees of the casino where Respondent gambled, and none were collecting the Sabalinski Estate Fees or even aware of a “Mr. Sabalinski.”

k. Respondent failed to disclose to Investor that “Mr. Wong,” “Mr. Dahill,” “Mr. Sabalinski,” and the “attorneys” who called Investor soliciting funds for the Investment Program and related fees and costs were actually Respondent.

l. Respondent failed to disclose to Investor that her funds would not be invested into the Investment Program, but would be used by Respondent for personal living expenses or gambling in Las Vegas, Nevada.

m. Respondent failed to disclose to Investor that the Investment Program was required by law to be registered with the Office of the Securities Commissioner, but were not registered or otherwise exempt from registration under HRS Chapters 485 and 485A.

n. Respondent failed to disclose to Investor that he was required by law to be registered as a securities salesperson or agent with the Office of the Commissioner, but was not registered or otherwise exempt from registration under HRS Chapters 485 and 485A.

26. In connection with the offer and sale of the Investment Program, Respondent also employed devices, schemes, or artifices to defraud Investor and engaged in acts, practices, or courses of business to operate a fraud or deceit upon Investor, as evident in the acts described hereinabove.

IV. PRELIMINARY CONCLUSIONS OF LAW

27. The facts and allegations in paragraphs 1 through 26, inclusive, are reasserted and incorporated herein as if set forth verbatim.

28. The Investment Program that Respondent sold to Investor as described hereinabove constituted a “security” as defined by HRS §§ 485-1(13) and 485A-102.

29. The Investment Program was required to be registered or appropriately exempted from registration with the Office of the Commissioner pursuant to HRS §§ 485-8 and 485A-301.

30. The Investment Program was neither registered nor exempted from being registered with the Office of the Commissioner in violation of HRS §§ 485-8 and 485A-301.

31. Respondent effected and attempted to effect the sale of the Investment Program to Investor and thus acted as a “salesperson,” as defined by HRS § 485-1, and “agent,” as defined by HRS § 485A-102.

32. Respondent was required to be registered as a salesperson and agent with the Office of the Securities Commissioner pursuant to HRS §§ 485-14 and 485A-402 when he offered to sell and sold the Investment Program to Investor.

33. Respondent was neither registered nor exempted from being registered with the Office of the Commissioner in violation of HRS §§ 485-14 and 485A-402.

34. In connection with the offer and sale of the Investment Program to Investor, Respondent employed a device, scheme, or artifice to defraud Investor in violation of HRS §§ 485-25(a)(1) and 485A-501(a)(1).

35. In connection with the offer and sale of the Investment Program to Investor, Respondent made untrue statements of material fact and material omissions to Investor in violation of HRS §§ 485-25(a)(2) and 485A-501(a)(2).

36. In connection with the offer and sale of the Investment Program to Investor, Respondent engaged in acts, practices, or a course of business that operated as a fraud or deceit upon Investor in violation of HRS §§ 485-25(a)(3) and 485A-501(a)(3).

37. The aforesaid acts constitute violations of HRS Chapter 485A committed against Investor who, at the time of the violation, was sixty-two years of age or older, pursuant to HRS § 485A-604.5.

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS §§ 485-18.7 and 485A-604, because of the foregoing findings and conclusions and/or because it appears that Respondent may engage in further acts or practices in violation of HRS Chapter 485A and/or because it is found that this action is necessary and in the public interest for the protection of investors, IT IS HEREBY ORDERED that:

(1) Respondent shall CEASE AND DESIST from making any offer to sell, solicitation to purchase, sale of and/or transfer of the Investment Program or any other security within, to, or from the State of Hawai'i;

(2) All contracts regarding the purchase or sale of the Investment Program by Respondent to Investor and any similarly situated investor are hereby RESCINDED effective immediately. Respondent shall REFUND to Investor all monies or other compensation paid, plus interest at the rate of ten percent (10%) per annum from the date of the investment to the date of the refund payment until fully paid, less any monies already refunded to Investor. This payment shall be made within thirty (30) days of the date of the Commissioner's final order ("**Final Order**"). Proof of said payments to Investor shall be provided to the Securities Enforcement Branch within thirty (30) days of the date of the Final Order;

(3) Respondent shall be liable to pay the State of Hawai'i, Department of Commerce and Consumer Affairs, Business Registration Division, a PENALTY in the sum of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) plus interest on the unpaid balance thereof at the rate of ten percent (10%) per annum from the date of the Final Order until finally paid. Payment of this penalty shall be made by cashier's check or

certified check made payable to the “Department of Commerce and Consumer Affairs Compliance Resolution Fund” and received by the Commissioner within thirty (30) days of the date of the Final Order;

(4) Respondent is PERMANENTLY BARRED as broker-dealer, agent, investment adviser, and/or investment adviser representative from the date of the Final Order and from applying for registration in the State of Hawai‘i as broker-dealer, agent, investment adviser, and/or investment adviser representative from the date of the Final Order;

(5) Respondent shall be subject to a penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) per violation for each and every violation of this preliminary order (“**Preliminary Order**”) or any order of the Commissioner pursuant to HRS § 485A-604 and any future violation of HRS Chapter 485A; and

(6) The imposition of this Preliminary Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondent or any other party for any other past violation of HRS Chapter 485 or future violations of HRS Chapter 485A or any other successor statute.

NOTICE OF RIGHT TO HEARING

YOU ARE HEREBY NOTIFIED that you may request a hearing on this matter within thirty (30) days after the date of service of this Preliminary Order pursuant to HRS § 485A-604. Your request must be in writing and addressed to the Office of Administrative Hearings (“OAH”) at Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawai‘I, P.O. Box 541, Honolulu, Hawai‘i 96809. A copy of your request must be simultaneously served upon the Securities Enforcement Branch at: Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawai‘i, P.O. Box 40, Honolulu, Hawai‘i 96810.

If a hearing is requested, it shall be scheduled within fifteen (15) business days after your written request has been received by OAH unless extended by the Commissioner for good cause. If OAH does not receive a written request for hearing within thirty (30) days after the date of service of this Preliminary Order and none is ordered by the Commissioner, this Preliminary Order shall become a final order of the Commissioner by operation of law pursuant to HRS § 485A-604(b).

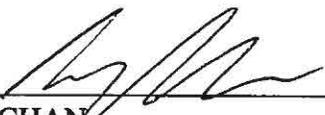
You are hereby further notified that you may move the Commissioner to reconsider a final order within ten (10) days after receiving a final order pursuant to Hawaii Administrative Rules for Administrative Practice and Procedure § 16-201-23. Your motion shall be filed with the Commissioner and shall state specifically what points of law or facts the Commissioner has overlooked or misunderstood together with brief arguments on the points raised.

Additionally, pursuant to HRS § 485A-609, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawai'i in the manner provided in HRS Chapter 91.

You have the right to retain legal counsel, at your own expense, for all stages of these proceedings.

FEB - 7 2014

DATED: Honolulu, Hawai'i, _____.



TUNG CHAN
Commissioner of Securities
Department of Commerce and Consumer Affairs
STATE OF HAWAII