

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of: ) Case No. SEU 2011-017  
COLBURN KUWATA, )  
Respondent. ) PRELIMINARY ORDER TO  
CEASE AND DESIST; NOTICE OF  
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, the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii (“Commissioner”) has conducted a preliminary investigation into the activities of the above-named respondent, Colburn Kuwata (“Kuwata” or “Respondent”), to determine if Kuwata has engaged in any act or practice constituting a violation of HRS Chapters 485 and 485A, or any rule or order adopted thereunder, or is about to engage in any act or practice constituting a violation of HRS Chapter 485A.

Based on the results of the preliminary investigation, the Commissioner believes that Kuwata has violated HRS Chapter 485A and violated an order adopted under HRS Chapter 485, as follows:

**II. STATEMENT OF JURISDICTION**

The Commissioner has jurisdiction over this matter as this case involves securities-related activities under HRS Chapters 485 and 485A.

### III. PRELIMINARY FINDINGS OF FACT

1. At all relevant times herein, Kuwata (CRD# 1387662) was a resident of the State of Hawaii.

2. On August 20, 2001, Respondent was terminated from Sunset Financial Services, Inc. ("Sunset"), for potential selling away violations and signing documents on behalf of Sunset outside the scope of Respondent's authority and barred from association with any National Association of Securities Dealers ("NASD") member in any capacity for failing to respond to NASD requests for documents and/or information.

3. On October 2, 2000, the Commissioner issued a consent order against Respondent ("2000 Consent Order"). The 2000 Consent Order permanently barred Respondent from engaging in any securities transactions in the State of Hawaii, asserting that Respondent sold unregistered securities in the State of Hawaii and made fraudulent misrepresentations and omissions in connection with such sales.

4. On or about August 13, 2009, Respondent solicited, offered and/or sold, securities, as defined in HRS § 485A-102, to a Hawaii resident ("Investor") in the form of an investment contract as described herein below in violation of the 2000 Consent Order.

5. Respondent induced Investor to invest with Respondent by representing that Respondent would invest Investor's money in an "accounts receivable plan" and/or a "medical plan" originating from a London-based company and that Investor would earn a return of twenty percent within one year (the investment described by Respondent is hereinafter referred to as the "Plan"). Respondent further represented that the Plan was risk-free and insured by the insurance

company Allianz. Respondent represented to Investor that her returns would be paid in the form of First Hawaiian Bank cashier's checks.

6. Based on Respondent's representations, Investor issued a \$60,000 check to Respondent on August 13, 2009 to invest in the Plan.

7. Investor was seventy years old at the time Respondent sold Investor the Plan.

8. Respondent deposited Investor's check into Respondent's bank account at American Savings Bank on or about August 13, 2009, then misappropriated Investor's money as follows:

a. Respondent used most of the money he received from Investor to make a mortgage payment without Investor's knowledge, authority, and/or consent.

b. Respondent used a portion of the money he received from Investor to pay for other personal expenses without Investor's knowledge, authority, and/or consent.

9. Between April 2011 and June 2011, Investor contacted Respondent via email regarding her investment with Respondent because she had not received any returns.

10. On or about September 26, 2011, Respondent had First Hawaiian Bank issue Investor a \$1,000 bank check, using funds from Respondent's account at First Hawaiian Bank. This was the only payment Respondent made to Investor.

11. Respondent made the following untrue statements of material fact or material omissions, in connection with the offer and sale of the Plan to Investor, and as a result of, but not

limited to, the following misrepresentations and omissions, the Investor was induced into investing with Respondent:

- a. Respondent failed to disclose to Investor that he was permanently barred from engaging in securities transactions pursuant to the 2000 Consent Order.
- b. Respondent failed to disclose to Investor that he was barred from associating with any NASD member in any capacity, effective August 21, 2001.
- c. Respondent represented to Investor that he would invest Investor's money in an "accounts receivable plan" and/or a "medical plan" originating from a London-based company. This was untrue and Respondent made no such investment.
- d. Respondent represented to Investor that Investor would earn a twenty percent return within one year. However, Investor received no such return.
- e. Respondent represented to Investor that investment in the Plan was risk-free as the Plan was insured by Allianz. This was not true. The Plan was not risk-free; Investor was never repaid her invested principal and never paid the returns promised by Respondent.
- f. Respondent failed to disclose to Investor that he would use money he received from Investor to pay for Respondent's personal expenses, including a mortgage payment, rather than investing such money on Investor's behalf.

g. Respondent failed to disclose to Investor that he was not registered as a broker-dealer or agent with the Office of the Securities Commissioner (“Office of the Commissioner”).

h. Respondent failed to disclose to Investor that the Plan was not registered as a security with the Office of the Commissioner.

12. Respondent did not register the Plan as a security with the Office of the Commissioner as required by HRS § 485A-301.

13. Respondent was not registered as a broker-dealer or agent with the Office of the Commissioner as required by HRS §§ 485A-401 or -402.

14. In furtherance of the offer, purchase, and/or sale of the Plan, Respondent employed devices, schemes or artifices to defraud and engaged in acts, practices, or courses of business to operate as a fraud or deceit upon Investor, as evident in the acts described hereinabove.

#### IV. PRELIMINARY CONCLUSIONS OF LAW

15. The facts and allegations in paragraphs 1 through 14, inclusive, are realleged and incorporated herein in their entirety.

16. The Commissioner has jurisdiction over this matter pursuant to HRS § 485A-601.

17. At all relevant times herein, the Plan offered and/or sold by Respondent constituted a “security” in the form of an “investment contract” within the meaning of HRS § 485A-102.

18. At all relevant times herein, the security that Respondent sold to Investor was not registered with the Office of the Commissioner, nor was it exempted from registration, in violation of HRS § 485A-301.

19. Respondent's offer to sell and/or sale of the above described security to Investor constitutes securities transactions in the State of Hawaii by an unregistered broker-dealer or agent in violation of HRS § 485A-401 or -402.

20. Respondent's actions as alleged in paragraphs 1 through 14, inclusive, constitute securities fraud, in violation of HRS § 485A-501, in the following particulars:

a. In connection with the offer, sale, or purchase of securities, Respondent employed a device, scheme, and/or artifices to defraud, and engaged in acts, practices, or a course of business that operated as a fraud or deceit upon the Investor, in violation of HRS § 485A-501(a)(1) and (3); and

b. In connection with the offer, sale, or purchase of securities, Respondent made untrue statements of material fact and omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in violation of HRS § 485A-501(a)(2).

21. The aforesaid acts of Respondent constitute violations of HRS Chapter 485A, committed against a person who at the time of the violation was sixty-two years of age or older, pursuant to HRS § 485A-603.5.

22. Respondent's aforesaid acts also constitute violations of the 2000 Consent Order.

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS §§ 485-18.7 and 485A-604, because of the aforementioned findings, and/or because it appears that Respondents 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) Respondents shall CEASE AND DESIST from making any offer to sell, solicitation to purchase, sale of and/or transfer of the above-described security, or any other security, within, to or from the State of Hawaii;

(2) All contracts regarding the purchase or sale of the aforesaid security or any other similar securities by Respondent to any investor are hereby RESCINDED effective immediately. Respondents shall REFUND to the investors 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 the investors. 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 the investors 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 Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, a PENALTY in the sum of THREE HUNDRED THOUSAND AND NO/100 DOLLARS (\$300,000.00) 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 shall be permanently barred and enjoined from applying for registration in the State of Hawaii and/or engaging in the business of a broker-dealer, agent, investment adviser, and/or investment adviser representative and from transacting business in the securities industry as defined in HRS Chapter 485A on 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 to cease and desist ("Preliminary Order") or any order of the Commissioner, pursuant to HRS § 485A-604, and any future violation of Chapter 485A, HRS;

(6) The imposition of this Preliminary Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against Respondents or any other party for violations of HRS Chapters 485 and/or 485A.

#### NOTICE OF RIGHT TO HEARING

YOU ARE HEREBY NOTIFIED that pursuant to HRS § 485-18.7(b) and HRS § 485A-604, as applicable, you may request a hearing on this matter within thirty (30) days after the date of service of this Preliminary Order. Your request must be in writing and addressed to: Office of Administrative Hearings, Department of Commerce and Consumer Affairs, State of Hawaii ("OAH"), P.O. Box 541, Honolulu, Hawaii, 96809.

A copy of your request must be simultaneously served upon the Securities Enforcement Branch, Department of Commerce and Consumer Affairs, State of Hawaii, P.O. Box 40, Honolulu, Hawaii 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.

You are hereby further notified that pursuant to § 16-201-23 of the Hawaii Administrative Rules for Administrative Practice and Procedure, you may move the Commissioner to reconsider a final order within ten (10) days after receiving a final order. 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 § 485-23 and HRS § 485A-609, as applicable, you may file an appeal with the Circuit Court of the First Circuit of the State of Hawaii 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.

DATED: Honolulu, Hawaii, APR - 2 2013.

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