

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case Nos. SEU-2010-026; SEU-2010-027;
)	SEU-2010-028; and SEU-2010-031
)	
NOEL P. MANUEL; AND)	
CNE ENTERPRISES, LLC,)	PRELIMINARY ORDER TO
)	CEASE AND DESIST; NOTICE OF
)	RIGHT TO HEARING
Respondents.)	
)	
)	

PRELIMINARY ORDER TO CEASE AND DESIST

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by Chapter 485 and Chapter 485A of the Hawaii Revised Statutes ("HRS"), 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 respondents, to determine if they have engaged in any act or practice constituting a violation of HRS Chapters 485 and 485A or any rule or order adopted thereunder, or are about to engage in any act or practice constituting a violation of HRS Chapter 485A or any rule or order adopted thereunder. HRS Chapter 485 was in effect from 1957 to June 30, 2008 and its successor, HRS Chapter 485A, took effect on July 1, 2008.

Based on the results of the preliminary investigation, the Commissioner believes that the above-named respondents have violated HRS Chapters 485 and 485A, 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, Respondent Noel P. Manuel ("Manuel") was a resident of the State of Hawaii.

2. Respondent CNE Enterprises, LLC ("CNE"), was a Hawaii limited liability company from the date of its organization on July 7, 2008. CNE's last registered mailing address was at P.O. Box 971026, Waipahu, Hawaii 96707. Manuel has been a member of CNE since the date of its organization. Manuel has been the sole member of CNE since July 1, 2009.

3. "Respondents" hereinafter refer to Manuel and CNE, collectively.

4. From or around April 2008 to or around December 2009, Respondents solicited investors, including members of Manuel's church and extended family, to purchase securities in the form of investment contracts issued by CNE ("CNE Agreements"), which Respondents represented would yield fixed returns.

5. Manuel represented to investors that CNE was in the business of importing fish from the Philippines to sell in Hawaii.

6. Manuel made it appear that money Respondents received from investors would be put to immediate use in Respondents' business by representing to some investors that Respondents needed their investments to have containers of fish released from customs. Manuel told other

investors that their investments would be used to pay for shipments of fish that were waiting in the Philippines or were on their way from the Philippines.

7. In an attempt to show that CNE was an on-going business, Manuel showed at least one investor what Manuel represented were invoices for previous fish shipments that Respondents had brought to Hawaii.

8. Between April 2008 and December 2009, Investors One through Fourteen (hereinafter collectively referred to as "Investors") paid Respondents a total of approximately \$330,240 to invest in the CNE Agreements as follows:

- a. Investor One paid Respondents \$5,000 in April 2008;
- b. Investor Two paid Respondents \$5,000 in November 2008;
- c. Investor Three paid Respondents \$13,000 between September 2008 and August 2009;
- d. Investor Four paid Respondents \$13,500 between November 2008 and December 2008;
- e. Investor Five paid Respondents \$25,000 in December 2008;
- f. Investor Six paid Respondents \$3,740 in January 2009;
- g. Investor Seven paid Respondents \$145,000 between February 2009 and April 2009;
- h. Investor Eight paid Respondents \$20,000 between June 2009 and July 2009;
- i. Investor Nine paid Respondents \$20,000 in July 2009;
- j. Investor Ten paid Respondents \$15,000 in August 2009;

- k. Investor Eleven paid Respondents \$20,000 in November 2009;
- l. Investor Twelve paid Respondents \$10,000 in November 2009;
- m. Investor Thirteen paid Respondents \$20,000 in November 2009; and,
- n. Investor Fourteen paid Respondents \$15,000 in December 2009.

9. Respondents provided documents to some of the Investors entitled "Confidentiality Agreement (USA)" that confirmed those Investors' purchases of CNE Agreements.

10. A portion of the money the Investors paid for CNE Agreements was deposited into a bank account in CNE's name. A portion of such money may have been used to import fish. However, unbeknownst to the Investors, Respondents also used the Investors' money for non-business expenses including retail purchases, payments to golf courses, food, payments to Manuel's wife, and cash and ATM withdrawals. Some monies paid by Investors for CNE Agreements were also used to pay some returns to Investor Seven.

11. Respondents attempted to assure Investor Seven that promised returns would be paid by giving Investor Seven a series of post-dated checks, which Manuel stated could later be cashed to provide Investor Seven with returns and repayment of invested principal. However, the checking account from which those checks were written was closed prior to the earliest date indicated on any of the post-dated checks.

12. Most of the Investors did not receive the returns they were promised by Respondents.

13. Respondents made the following untrue statements of material fact or material omissions, in connection with the offer and sale of CNE Agreements, and as a result of, but not

limited to, the following misrepresentations and omissions, the Investors were induced into investing with Respondents:

- a. Respondents failed to disclose to the Investors that a portion of their investments would be used for non-business expenses rather than CNE's business expenses. Such non-business expenses included retail purchases, payments to golf courses, food, payments to Manuel's wife, and cash and ATM withdrawals.
- b. Respondents issued twenty-two post-dated checks to Investor Seven to be negotiated for the future payment of returns due under CNE Agreements and future repayment of Investor Seven's principal invested in CNE Agreements. However, Respondents failed to disclose that the checking account from which the checks were issued was closed prior to the dates indicated on any of the checks.
- c. Respondents failed to inform Investor Eleven that Investor Eleven's investment in CNE Agreements would be used to pay returns to Investor Seven.
- d. Respondents failed to inform Investor Thirteen that Investor Thirteen's investment in CNE Agreements would be used to pay returns to Investor Seven and for other non-business expenses.
- e. Respondents induced the Investors to purchase CNE Agreements by falsely promising and/or guaranteeing that the Investors would earn fixed rates of return of as high as forty percent per year. Most

of the Investors did not receive the returns they were promised by Respondents.

- f. Manuel told Investor Nine that purchasing a CNE Agreement would provide Investor Nine with steady income. However, Investor Nine did not receive any payments from Respondents.
- g. Manuel told Investor Ten that after purchasing a CNE Agreement, Investor Ten would receive a return within six months. However, Investor Ten did not receive any payments from Respondents.
- h. Manuel told Investor Fourteen that CNE Agreements would yield a forty percent return within one year. However, Investor Fourteen did not receive any payments from Respondents.
- i. Respondents failed to disclose to the Investors that the CNE Agreements were securities that were required to be registered with the Office of the Securities Commissioner ("Office of the Commissioner"), and were not registered or exempt from registration, pursuant to HRS Chapters 485 and/or 485A, respectively.
- j. Respondents failed to disclose to the Investors that Manuel was required to be registered with the Office of the Commissioner as a dealer, broker-dealer, securities salesperson, or agent, and was not registered or exempt from registration, pursuant to HRS Chapters 485 and/or 485A, respectively.

14. The Investors were induced to purchase CNE Agreements from Respondents by Respondents' promises, guarantees, and/or representations that the purchase of CNE Agreements

would result in a valuable future benefit accruing to the Investors in the form of fixed returns as a result of the operation of the enterprise.

15. Monies the Investors paid to Respondents in exchange for CNE Agreements were subject to the risk of CNE's success.

16. The Investors did not receive, nor did they intend to receive, any right to exercise any control over the managerial decisions of CNE.

17. The CNE Agreements sold to the Investors were "securities" pursuant to HRS § 485-1 and HRS § 485A-102, and other applicable authority. However, Respondents did not register the CNE Agreements as securities with the Office of Commissioner as required by HRS § 485-8 and HRS § 485A-301, as applicable.

18. Manuel acted as a dealer, broker-dealer, salesperson, and/or agent pursuant to HRS § 485-1 and HRS § 485A-102, as applicable, by effecting sales of CNE Agreements to the Investors for which Manuel was paid or given commissions or other remunerations, directly or indirectly. Manuel used a portion of the money Investors paid for CNE Agreements for personal expenses.

19. Manuel was required to register with the Office of the Commissioner as a salesperson pursuant to HRS § 485-14, as an agent pursuant to HRS § 485A-402, as a dealer pursuant to HRS § 485-14, and/or as a broker-dealer pursuant to HRS § 485A-401. However, he did not.

20. In furtherance of the offer, purchase, and/or sale of securities in the form of CNE Agreements, Respondents employed devices, schemes or artifices to defraud and engaged in acts,

practices, or courses of business to operate as a fraud or deceit upon the Investors, as evident in the acts described hereinabove.

IV. PRELIMINARY CONCLUSIONS OF LAW

21. The facts and allegations in paragraphs 1 through 20, inclusive, are realleged and incorporated herein in their entirety.

22. At all relevant times herein, the CNE Agreements described hereinabove were “securities” within the meaning of HRS § 485-1(13) or HRS § 485A-102, and other applicable authority and were required to be registered or appropriately exempted from registration with the Office of the Commissioner.

23. At all relevant times herein, the CNE Agreements that Respondents sold to the Investors were not registered with the Office of the Commissioner, nor were they appropriately exempted from registration, in violation of HRS § 485-8 and HRS § 485A-301, as applicable.

24. Manuel’s offer to sell and/or sale of the above-described securities to the Investors constitute securities transactions in the State of Hawaii by an unregistered salesperson in violation of HRS § 485-14, by an unregistered agent in violation of HRS § 485A-402, by an unregistered dealer in violation of HRS § 485-14, and/or by an unregistered broker-dealer in violation of HRS § 485A-401.

25. In connection with the offer, sale, or purchase of securities, Respondents employed a device, scheme, or artifice to defraud the Investors in violation of HRS § 485-25(a)(1) and HRS § 485A-501(a)(1), as applicable.

26. In connection with the offer, sale, or purchase of securities, Respondents misrepresented and omitted material facts to the Investors in violation of HRS § 485-25(a)(2) and HRS § 485A-501(a)(2), as applicable.

27. In connection with the offer, sale, or purchase of securities, Respondents engaged in acts, practices, or a course of business that operated as a fraud or deceit upon the Investors, in violation of HRS § 485-25(a)(3) and HRS § 485A-501(a)(3), as applicable.

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485-18.7 and HRS § 485A-604, as applicable, 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 securities, or any other security, within, to or from the State of Hawaii;

(2) All contracts regarding the purchase or sale of the aforesaid securities by Respondents 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) Respondents 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 administrative 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) Respondents are PERMANENTLY BARRED as agents, broker-dealers, investment advisers and/or investment adviser representatives from the date of the Final Order and from applying for registration in the State of Hawaii as agents, broker-dealers, investment advisers and/or investment adviser representatives from the date of the Final Order;

(5) Each Respondent shall be subject to a civil 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 HRS Chapter 485A;

(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, March 4, 2013.



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