

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:	)	Case No. SEU 2009-035
	)	
PATRICK J. O’SULLIVAN,	)	COMMISSIONER’S FINAL ORDER;
	)	EXHIBIT “1”
	)	
Respondent.	)	
_____	)	

COMMISSIONER’S FINAL ORDER

This matter now comes before the Commissioner of Securities, Department of Commerce and Consumer Affairs, State of Hawaii ("Commissioner"), for issuance of a final order against Patrick J. O’Sullivan ("Respondent").

I. PROCEDURAL HISTORY

1. On April 1, 2013, the Commissioner issued a Preliminary Order to Cease and Desist ("Preliminary Order") against Respondent. A copy of the Preliminary Order is attached hereto as Exhibit "1."

2. On April 2, 2013, Respondent was served with the Preliminary Order through his counsel, Mark S. Kawata, Esq., and on April 3, 2013, Respondent was served with the Preliminary Order at his *RedactedRedacted* address via certified mail.

3. Pursuant to § 485-18.7 Hawaii Revised Statutes ("HRS"), Respondent had thirty days to request an administrative hearing, meaning that a request for hearing was due to the Commissioner on or before May 2, 2013.

4. On April 11, 2013, Respondent timely filed a request for hearing on the Preliminary Order pursuant to HRS § 485-18.7. A hearing was set for May 2, 2013, and was subsequently continued to August 5, 2013.

5. On July 11, 2013, Respondent withdrew his request for a hearing. As a result, the August 5, 2013 hearing date was removed from the Office of Administrative Hearings' calendar. Respondent has made no subsequent request for a hearing.

6. Respondent's withdrawal of his request for a hearing has the same effect as if he had not filed a request. Accordingly, the thirty-day period for Respondent to request a hearing pursuant to HRS § 485-18.7 expired on May 2, 2013.

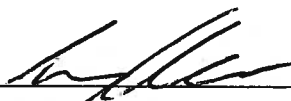
II. ORDER

Therefore, pursuant to HRS § 485-18.7, the Commissioner hereby affirms all findings and orders in the Preliminary Order and further orders that the Preliminary Order issued on April 1, 2013, shall be final and incorporated in its entirety herein as part of this final order.

**YOU ARE HEREBY NOTIFIED** that, pursuant to § 16-201-23, Hawaii Administrative Rules for Administrative Practice and Procedure, you may, within ten (10) days after receipt of this final order, file a motion for reconsideration. Respondent's motion shall be filed with the Commissioner and shall state specifically what points of law or fact the Commissioner has overlooked or misunderstood together with brief arguments on the points raised. Additionally, pursuant to HRS §§ 485-23 and 485A-609, 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.

**JUL 30 2013**

Dated: Honolulu, Hawaii

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TUNG CHAN  
Commissioner of Securities  
STATE OF HAWAII

**COMMISSIONER'S  
FINAL ORDER  
EXHIBIT 1**

**STATE OF HAWAII**

**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

In the Matter of:

PATRICK J. O'SULLIVAN,  
Respondent.

) SEU-2009-035

) PRELIMINARY ORDER TO CEASE AND  
) DESIST AND NOTICE OF RIGHT TO  
) HEARING

**PRELIMINARY ORDER TO CEASE AND DESIST  
AND NOTICE OF RIGHT TO HEARING**

**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 respondent, to determine if he has engaged in or is about to engage in any act or practice constituting a violation of HRS Chapters 485 and 485A or any rule or order adopted thereunder. HRS Chapter 485 was in effect from 1957 to June 30, 2008. HRS Chapter 485A replaced HRS Chapter 485 on July 1, 2008.

Based on the results of the preliminary investigation, the Commissioner believes that Respondent Patrick J. O'Sullivan ("O'Sullivan") has violated HRS Chapter 485 and may be about to violate Chapter HRS 485A as follows:

**STATEMENT OF JURISDICTION**

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

## II. PRELIMINARY FINDINGS OF FACT

1. O'Sullivan is an individual and was, at all relevant times herein, a resident of the State of Hawaii.

2. Beginning on or about August 10, 2004, and continuing through December 4, 2005, O'Sullivan solicited, offered and/or sold securities in the form of investment contracts as defined under HRS § 485-1(13), and other applicable authority, to a Hawaii investor ("Investor").

3. During the sixteen years preceding Investor's initial investment in August 2004, Investor knew O'Sullivan as his friend and sometimes-employer, often talking about personal matters, including personal finances, at O'Sullivan's pig farm on Oahu. O'Sullivan frequently showed Investor large amounts of cash which he had on-hand at his pig farm, including stacks of bills totaling \$90,000 on one such occasion. Investor eventually asked O'Sullivan where he had gotten such large amounts of cash. O'Sullivan said that it was money he made by investing through his accountant, "Gary."

4. O'Sullivan told Investor that if he wanted to make money like that too, he could give investment money to O'Sullivan, and that he, O'Sullivan, would pass the money on to "Gary" to invest. Investor never met "Gary," and there is no evidence that "Gary" exists, or that anyone other than O'Sullivan and Investor were involved in this investment program.

5. Regarding the investment program, O'Sullivan represented to Investor, among other things, that:

a. "Gary" would invest Investor's monies in an "industrial loan" investment program, in which loans would be made at high interest rates to business people with bad credit histories;

b. although the minimum amount to invest was \$10,000 at a time, Investor's first investment could be \$5,000;

c. every \$5,000 Investor invested would generate a "guaranteed" return of \$3,000, and that Investor would receive his principal as well as the return within three to five years, if not sooner; and,

d. he could offer two other investment opportunities which were similar to "Gary's," except that they would result in Investor being repaid his principal plus a return equal to 150% of the principal invested. O'Sullivan described one of these programs as a loan to Walter Dods, former First Hawaiian Bank Chairman, to provide funding to Walter Dods for a plaza he was building in China.

6. Beginning on or about August 10, 2004, and continuing through December 4, 2005, Investor invested approximately \$250,000 in the investment program by making payments to O'Sullivan via personal checks and cash.

7. Beginning after August 10, 2004, and continuing through mid-2006, O'Sullivan periodically made cash payments to Investor totaling \$116,410, telling Investor that these payments were dividends being generated by the loan programs in which Investor had invested.

8. The money invested by Investor was subject to the risks of O'Sullivan's industrial loan program.

9. Investor was induced to invest with O'Sullivan by his promises, guarantees, and/or representations that Investor's investments would result in a valuable benefit beyond the initial value paid.

10. Investor had no practical or actual control over the managerial decisions regarding the investment program. Rather, O'Sullivan had sole control over management of the investment program and Investor's investment monies.

11. The investments made by Investor were investment contracts, which constitute securities ("Securities") under HRS § 485-1(13) and other applicable authority.

12. O'Sullivan did not register the Securities with the Office of the Commissioner ("Office of the Commissioner"), pursuant to HRS § 485-8.

13. O'Sullivan acted as a securities dealer and/or securities salesperson pursuant to HRS § 485-14, by effecting and attempting to effect the purchases or sales of the Securities.

14. O'Sullivan was paid or given commissions or other remunerations, directly or indirectly, for soliciting investment monies from Investor. Specifically, O'Sullivan kept some, if not all, of Investor's investment monies for his personal expenses and use.

15. At no point in time was O'Sullivan registered as a securities dealer and/or securities salesperson pursuant to HRS § 485-14.

16. O'Sullivan made the following untrue statements of material fact and material omissions, orally or via written materials, in connection with the offer and/or sale of the Securities, and as a result of, but not limited to, the following misrepresentations and omissions, Investor was induced into investing in O'Sullivan's investment program:

a. O'Sullivan told the Investor that "Gary" would invest his money. This was not true. "Gary" did not invest or otherwise manage any of Investor's money.

b. O'Sullivan induced Investor to invest in the complex "industrial loan" program with the promise of significant returns. O'Sullivan made payments to investor totaling \$116,410, telling investor that these payments were returns on his investment in

the loan program. In fact, there was no loan program and these payments were actually pulled from Investor's principle investment.

c. O'Sullivan failed to disclose to the Investor that the portion of his investment monies which were not returned to him would be spent on personal expenses, including trips to casinos in California and Nevada.

d. O'Sullivan told Investor that one of the "industrial loan" investment programs involved a loan to Walter Dods, former First Hawaiian Bank Chairman, to provide funding to Walter Dods for a plaza he was building in China. This was not true.

e. O'Sullivan told Investor that he could no longer pay returns to Investor because Walter Dods, among others, had stopped paying on his loan. This was not true.

f. O'Sullivan failed to inform Investor that his investment was required to be registered with the Office of the Commissioner pursuant to HRS § 485-8 and was neither registered, nor exempt from registration under HRS Chapter 485.

g. O'Sullivan failed to disclose that he was required to be registered with the Office of the Commissioner as a securities dealer and/or securities salesperson pursuant to HRS § 485-14 and was neither registered nor exempt from registration under HRS Chapter 485.

h. O'Sullivan promised high rates of return, calling the investment program a "guaranteed deal;" however, Investor never realized these returns and only received back \$116,410 of the \$250,000 he initially invested.

i. Prior to Investor's investment, O'Sullivan provided a four-page, hand-written document to Investor, to assist in explaining how much he could expect in returns on his investment. O'Sullivan gave this document to Investor for the purpose of



soliciting and enticing Investor to invest in the industrial loan investment program. O'Sullivan never paid Investor the promised returns.

j. O'Sullivan failed to inform Investor that there were risks involved with his investment, and, in fact, told Investor that the returns were "guaranteed."

17. In furtherance of the offer, purchase, and/or sale of the Securities, O'Sullivan 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 Investor, as evident in the acts described hereinabove.

#### IV. PRELIMINARY CONCLUSIONS OF LAW

18. The matters contained in paragraphs 1 through 17, inclusive, are reasserted and incorporated herein as if set forth verbatim.

19. The investment contracts described hereinabove constitute securities within the meaning of HRS § 485-1(13) and other applicable authority, and were required to be registered with the Office of the Commissioner and were not appropriately exempted.

20. The Securities sold to the Investor were not registered with the Office of the Commissioner, in violation of HRS § 485-8, nor were they appropriately exempted from registration.

21. O'Sullivan's actions, in connection with the offering for sale and/or selling of the Securities to the Investor, constitute the transaction of business in the State of Hawaii by an unregistered securities dealer and/or securities salesperson in violation of HRS § 485-14.

22. In connection with the offer, sale, or purchase of the Securities, O'Sullivan employed a device, scheme, or artifice to defraud the Investor, in violation of HRS § 485-25(a)(1).

23. In connection with the offer, sale, or purchase of the Securities, O'Sullivan misrepresented and/or omitted material facts to the Investor, in violation of HRS § 485-25(a)(2).

24. In connection with the offer, sale, or purchase of the Securities, O'Sullivan engaged in acts, practices, or a course of business that operated as a fraud or deceit upon the Investor, in violation of HRS § 485-25(a)(3).

25. In connection with the offer, sale, or purchase of the Securities, O'Sullivan issued, circulated, or published untrue statements of material facts, in violation of HRS § 485-25(a)(4).

**V. PRELIMINARY ORDER TO CEASE AND DESIST**

NOW THEREFORE, pursuant to HRS § 485-18.7, because of the aforementioned findings and/or because it appears that O'Sullivan 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. O'Sullivan 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 O'Sullivan to Investor, and any similarly situated investors, are hereby RESCINDED effective immediately. O'Sullivan 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 (the "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. O'Sullivan shall be liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, an ADMINISTRATIVE PENALTY in the sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) 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 Office of the Commissioner within thirty (30) days of the date of the Final Order;

4. O'Sullivan is PERMANENTLY BARRED as an agent, broker-dealer, investment adviser and/or investment adviser representative from the date of the Final Order and from applying for registration in the State of Hawaii as an agent, broker-dealer, investment adviser and/or investment adviser representative or any equivalent under any successor statute to HRS Chapter 485A from the date of the Final Order;

5. O'Sullivan 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 ("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 Order shall not preclude or prevent in any way the imposition of further sanctions or other actions against O'Sullivan or any other party for past violations of HRS Chapter and/or past or future violations of HRS Chapter 485A or any successor statute.

NOTICE OF RIGHT TO HEARING

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

A copy of your written request for a hearing 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 the Office of Administrative Hearings unless extended by the Commissioner for good cause.

If no written request for hearing is received by the Office of Administrative Hearings and none is ordered by the Commissioner, this Order shall remain in effect unless and until modified or vacated by the Commissioner or a Final Order becomes effective.

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 the Final Order. Your motion shall be filed with the Office of 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, 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 -1 2013

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TUNG CHAN  
Commissioner of Securities  
DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII