

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

In the Matter of:)	Case No. SEU-2010-025
)	
LEILANI EMBERNATE,)	PRELIMINARY ORDER TO
JOYCELYN EMBERNATE, and)	CEASE AND DESIST AND
TWIN STARS OF THE PACIFIC, INC.,)	NOTICE OF RIGHT TO HEARING
)	
Respondents.)	
_____)	

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

I. STATEMENT OF APPLICABLE STATUTORY LAW

Pursuant to the authority granted by the Uniform Securities Act, Hawaii Revised Statutes (“HRS”) Chapter 485, and its successor, HRS Chapter 485A¹, the rules and orders adopted thereunder, and other applicable authority, the Commissioner of Securities of the State of Hawaii (“Commissioner”) has conducted an investigation into the activities of the above-named respondents, Leilani Embernate, Joycelyn Embernate, and Twin Stars of the Pacific, Inc. (hereinafter, collectively referred to as “Respondents”), to determine if they have engaged in or are about to engage in any act or practice constituting a violation of HRS Chapter 485, HRS Chapter 485A, or any rule or order adopted thereunder.

Based on the information revealed during the investigation, the Commissioner has reasonable cause to believe that Respondents have violated HRS Chapter 485 as follows:

¹ The Uniform Securities Act (Modified) codified as HRS Chapter 485 was repealed and replaced with the Uniform Securities Act codified as HRS Chapter 485A, effective July 1, 2008. HRS Chapter 485 governs all actions instituted on the basis of conduct occurring before July 1, 2008. HRS Chapter 485A governs all actions instituted on the basis of conduct occurring on or after July 1, 2008. HRS § 485A-701(a).

II. STATEMENT OF JURISDICTION

The Commissioner has jurisdiction over this matter because it involves securities as defined in HRS § 485-1(13).

III. PRELIMINARY FINDINGS OF FACT

1. Leilani Embernate is an individual and was, at all relevant times herein, a resident of the island of Hawaii, state of Hawaii.

2. Joycelyn Embernate is an individual and was, at all relevant times herein, a resident of the island of Hawaii, state of Hawaii.

3. Twin Stars of the Pacific, Inc. ("TSP"), was registered as a domestic profit corporation in Hawaii on June 13, 1996, with Leilani Embernate as its president, director, and secretary; and Joycelyn Embernate as its vice-president, director, treasurer, and registered agent. TSP was formed for the purpose of financial consulting.

4. In March 2008, Leilani Embernate and Joycelyn Embernate (together, "Respondents Embernate") solicited a Hawaii investor, "B.G.," to invest \$100,000.00 in a real estate development project they were working on through their company, TSP.

5. On March 26, 2008, B.G. met with Joycelyn Embernate who told him that his investment with TSP would be for the development of office space on a lot owned by Leilani Embernate in Kohanaiki Business Park, Kailua-Kona, Hawaii. B.G. later spoke with Leilani Embernate who confirmed what Joycelyn Embernate told him regarding the investment.

6. Respondents Embernate assured B.G. that the venture had no chance of falling through and that he would receive his \$100,000.00 principal and 7% interest at the end of the investment.

7. Based upon Respondents Embernate's representations regarding the investment, on March 26, 2008, B.G. gave Joycelyn Embernate a \$100,000.00 personal check payable to TSP.

8. Thereafter, Respondents Embernate provided B.G. with a document titled "Investor's Agreement," dated March 26, 2008, promising to repay his \$100,000.00 principal with 7% interest per year starting from March 26, 2008, and payable in full by September 26, 2009. The agreement promised to pay the first year interest "in advance," and to pay the "second six months interest" on \$107,000.00.

9. The Investor's Agreement was issued by TSP and signed by both Leilani Embernate as president, and Joycelyn Embernate as vice-president.

10. B.G.'s \$100,000.00 check payable to TSP was deposited into TSP's North Hawaii Community Federal Credit Union checking account ("TSP account") on March 27, 2008.

11. On March 27, 2008, Joycelyn Embernate issued a \$100,000.00 check from the TSP account to Prime Time Mortgage, Inc., a domestic profit corporation of which Leilani Embernate was the president, director, and agent.

12. The \$100,000.00 check from TSP to Prime Time Mortgage, Inc. was deposited into an American Savings Bank account held by Prime Time Mortgage, Inc., on March 27, 2008. The Prime Time Mortgage Inc.'s checking account ("Prime Time Mortgage account") balance after the \$100,000.00 deposit was \$100,899.42.

13. B.G.'s \$100,000.00 investment was used as follows:

- a. On March 28, 2008, Leilani Embernate issued a check from the Prime Time Mortgage account in the amount of \$15,655.56, payable to a prior investor with TSP;

- b. On April 10, 2008, Leilani Embernate issued a check from the Prime Time Mortgage account in the amount of \$76,142.34, payable to Action Plumbing, Inc., with a description of "loan" on the memo line. Leilani Embernate was a director and the vice-president of Action Plumbing, Inc. On April 10, 2008, Action Plumbing, Inc. issued a check in the amount of \$44,039.83, payable to Leilani Embernate. The memo line on the check referenced "Emberate/Shareholder Contributions."
- c. Preauthorized debits for telephone, credit card, and insurance payments were also deducted from the Prime Time Mortgage account to pay for expenses unrelated to the office space development.

14. B.G.'s \$100,000.00 investment was subject to the risk of Respondents' office space development enterprise in Kohanaiki Business Park.

15. Respondents retained control and management of the real estate development enterprise. B.G. was not involved in any aspect of the management of the office space development project.

16. When the Investor's Agreement became payable on September 26, 2009, B.G. requested the principal and return on his investment from Respondents. Respondents did not repay B.G. his initial principal or the promised interest from the Investor's Agreement.

17. After various assurances to make B.G. whole, Respondents sent B.G. a check, dated November 12, 2009, issued by TSP and signed by Leilani Embernate, for \$5,000.00.

18. After this single \$5,000.00 payment, Respondents made no further payments to B.G. The net loss on B.G.'s investment was \$95,000.00.

19. Respondents never developed office space on the lot in Kohanaiki Business Park as promised. On April 21, 2009, Leilani Embernate sold this property to Oceans Seven, LLC, a domestic Hawaii limited liability company, of which Leilani Embernate was the registered agent and member. This same undeveloped property was sold again on December 9, 2010, to an unrelated buyer.

20. At no time from March 26, 2008, to the present, has the Investor's Agreement been registered as a security in the state of Hawaii.

21. Respondents made untrue statements of material fact and material omissions in connection with the offer and sale of the Investor's Agreement. B.G. was induced to invest as a result of, but not limited to, the following misrepresentations and omissions:

- a. Respondents told B.G. that he would earn 7% interest from the Investor's Agreement starting March 26, 2008, and would be repaid his principal and interest on September 26, 2009;
- b. Respondents failed to disclose that B.G.'s money would be used to pay a prior investor and to pay for expenses unrelated to the office space development;
- c. Respondents told B.G. that his money would be invested in the development of office space in Kohanaiki Business Park. However, no development took place; and
- d. Respondents failed to disclose to B.G. that the Investor's Agreement was not registered as a security under HRS Chapter 485.

22. In furtherance of the offer and sale of the Investor's Agreement, Respondents employed devices, schemes, or artifices to defraud B.G. and engaged in acts, practices, or courses of business to operate as a fraud or deceit upon B.G., as evident in the acts described hereinabove.

IV. PRELIMINARY CONCLUSIONS OF LAW

1. The Investor's Agreement that Respondents sold to B.G. satisfied the elements of an investment contract insofar as:

- a. B.G. furnished value to Respondents in the form of \$100,000.00;
- b. B.G.'s \$100,000.00 was subject to the risk of loss if Respondents' real estate development enterprise failed;
- c. B.G. was induced to furnish value to TSP based on Respondents' promises, guarantees, and representations that doing so would result in a valuable benefit beyond the initial value paid; and
- d. B.G. did not receive any right to exercise practical or actual control over the management of Respondents' business enterprise.

2. The Investor's Agreement constitutes a "security" within the meaning of HRS § 485-1(13) and other applicable authority, and was not exempt from registration under HRS Chapter 485 or other applicable law or rule.

3. Respondents violated HRS § 485-8, which states that it is unlawful to sell or offer to sell, unregistered securities in the state of Hawaii.

4. In connection with the offer, sale, and purchase of the Investor's Agreement, Respondents employed a device, scheme, or artifice to defraud B.G. in violation of HRS § 485-25(a)(1).

5. In connection with the offer and sale of the Investor's Agreement to B.G., Respondents 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 § 485-25(a)(2).

6. In connection with the offer, sale, and purchase of the Investor's Agreement, Respondents engaged in acts, practices, or a course of business that operated as a fraud or deceit upon B.G. in violation of HRS § 485-25(a)(3).

V. PRELIMINARY ORDER TO CEASE AND DESIST

NOW THEREFORE, pursuant to HRS § 485-18.7, because of the foregoing findings and conclusions and/or because it appears that Respondents may engage in acts or practices in violation of HRS Chapter 485A and 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, or sale of any security within, to, or from the state of Hawaii;
2. The sale of the Investor's Agreement by Respondents to B.G. is hereby RESCINDED effective immediately. Respondents, jointly and severally, as to the sale of the Investor's Agreement, shall REFUND to B.G., and all similarly situated investors, all monies or other compensation paid, less any amounts already refunded. These refund payments shall be paid within thirty (30) days of the date of the Commissioner's final order ("Final Order"). Proof of refund payments to investors shall be provided to the Securities Enforcement Branch;
3. Respondents shall be jointly and severally liable to pay the State of Hawaii, Department of Commerce and Consumer Affairs, Business Registration Division, a PENALTY in the sum of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), plus interest on the

unpaid balance thereof at the rate of ten-percent (10%) per annum from the date of the Final Order until fully paid. Payment of this penalty shall be made by cashier's check, bank draft, money order, or certified check; made payable to the "Department of Commerce and Consumer Affairs Compliance Resolution Fund" and delivered to the Securities Enforcement Branch at 335 Merchant Street, Suite 205, Honolulu, Hawaii, 96813 within thirty (30) days of the date of the Final Order;

4. Respondents are PERMANENTLY BARRED from acting as broker-dealers, agents, investment advisers, and/or investment adviser representatives as defined in HRS Chapter 485A or the equivalent under any successor statute from the date of the Final Order, and from applying for registration in the state of Hawaii as broker-dealers, agents, investment advisers, and/or investment adviser representatives from the date of the Final Order under HRS Chapter 485A or the equivalent under any successor statute;

5. Each Respondent shall be subject to a penalty of not more than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) 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 Respondents or any other party for past or future violations of HRS Chapter 485, HRS Chapter 485A, or any 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 §§ 485-18.7 and 485A-604. Your request must be in writing and addressed to the following: Office of Administrative Hearings (“OAH”), Department of Commerce and Consumer Affairs, 335 Merchant Street, Suite 100, Honolulu, Hawaii 96813.

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 the Final Order of the Commissioner by operation of law pursuant to HRS §§ 485-18.7(c) and 485A-604(b).

You are hereby further notified that pursuant to Hawaii Administrative Rules § 16-201-23, you may move the Commissioner to reconsider the Final Order within ten (10) days after receiving the 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 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.

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

DATED: Honolulu, Hawaii, DEC 20 2016


CATHERINE P. AWAKUNI COLÓN
 Commissioner of Securities
Department of Commerce and Consumer Affairs
STATE OF HAWAII