

HAWAII CIVIL RIGHTS COMMISSION
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THIRD CIRCUIT COURT
STATE OF HAWAII
FILED

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STACEY ENOKA
CLERK

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

MASAMI "SPARKY" NIIMI,)
)
Appellant,)
)
vs.)
)
HAWAII CIVIL RIGHTS)
COMMISSION,)
)
Appellee,)
_____)

CIVIL NO. 93-88
(Hilo)
Agency Appeal

FINAL ORDER AFFIRMING
AGENCY DECISION

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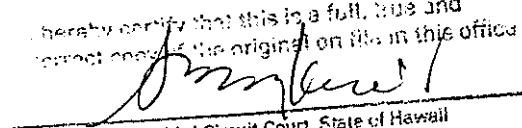
Oral argument on the briefs was held on January 7, 1994, 1:30 p.m., before the Honorable Riki M. Amano. Glenn Hara, Esq., represented Appellant Masami "Sparky" Niimi, and John Ishihara, Esq., represented Appellee Hawaii Civil Rights Commission.

Having read the briefs and heard the argument of counsel, THE COURT HEREBY FINDS THAT the Hawaii Civil Rights Commission's Findings of Fact are supported by the record under a de novo standard of review and HEREBY ADOPTS THE FINDINGS OF FACT.

Based upon the Findings of Fact, THE COURT HEREBY CONCLUDES AS A MATTER OF LAW THAT:

1) Complainant Dolores R. Santos filed a verified complaint against Hawaiian Flower Exports, Inc. with the Department

I hereby certify that this is a full, true and correct copy of the original on file in this office


Clerk, Third Circuit Court, State of Hawaii

of Labor and Industrial Relations within 180 days of the sexual harassment, and the Hawaii Civil Rights Commission properly assumed jurisdiction over the complaint;

2) The Hawaii Civil Rights Commission had the authority to conduct an administrative hearing and make a final decision on the complaint;

3) Appellant Masami "Sparky" Niimi was an agent of Hawaii Flower Exports, Inc., and can be held personally liable for his discriminatory conduct;

4) The Commission was authorized by H.R.S. § 368-3(2) to delegate to the Executive Director its power to determine the failure of conciliation efforts, and properly made such delegation;

5) The complaint was docketed for administrative hearing within the time frame established by the Commission's rules, Hawaii Administrative Rules ("H.A.R.") § 12-46-18, after the Executive Director determined that conciliation failed;

6) Appellant did not raise three procedural errors at the administrative hearing, the 180 day period to investigate and determine reasonable cause (Point of Error No. 4), the 180 day period to issue a conciliation demand (Point of Error No. 5), and the Executive Director's press release (Point of Error No. 8), and has waived them;

7) In determining whether there is sexual harassment, the Court must "look at record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred," H.A.R. § 12-46-

