

CIVIL RIGHTS COMMISSION

STATE OF HAWAII

WILLIAM D. HOSHIJO,)
Executive Director, on)
behalf of the complaint)
filed by BASSAM A. HEMAIDAN,)
v.)
LIFE SUPPORT SYSTEMS)
HAWAII, INC.)
Respondent.)

Docket No. 96-008-E-NO-MS
HEARINGS EXAMINER'S FINDINGS
OF FACT, CONCLUSIONS OF
LAW AND RECOMMENDED ORDER;
EXHIBIT 1; APPENDIX A.

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HEARINGS EXAMINER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER

I. INTRODUCTION

1. Chronology of Case

The procedural history of this case is set forth in the attached Appendix A.

2. Summary of the Parties' Contentions

The Executive Director asserts that Respondent Life Support Systems Hawaii, Inc. violated H.R.S. § 378-2(1)(C) and H.A.R. §§ 12-46-121 et. seq. and 12-46-171 et. seq. by making unlawful inquiries about Complainant's ancestry and marital status during a pre-employment interview.

Respondent admits that it asked Complainant and other applicants questions about their marital status. Respondent asserts that it does not recall asking Complainant questions about his ancestry or national origin and alleges that such issues may have been discussed as personal banter. Finally, Respondent contends that Complainant did not suffer emotional and mental

distress to the extent alleged by the Executive Director.

Having reviewed and considered the evidence and arguments presented at the hearing together with the entire record of these proceedings, the Hearings Examiner hereby renders the following findings of fact, conclusions of law and recommended order.

II. FINDINGS OF FACT¹

1. Complainant Bassam A. Hemaïdan is a Lebanese-Italian male. In 1991 he moved from Los Angeles, California to Hawaii. Complainant was born in Beirut, Lebanon. In 1975, when Complainant was twelve years old, he and his family moved from Lebanon to Los Angeles. (Tr. 48-49, 90)²

2. From February 1993 to June 1994, Complainant worked for approximately two months at General Nutrition Center, and returned to Los Angeles for approximately three months to care for his father. During the remainder of this period (approximately 10 months), Complainant was unemployed. While unemployed, Complainant received unemployment insurance and had weekly job

¹ As a preliminary matter, this Hearings Examiner has considered the proposed findings of fact and post-hearing arguments filed by the Executive Director. To the extent that the Executive Director's proposed findings of fact are in accord with the findings of fact stated herein, they are accepted, and to the extent that they are inconsistent, they are rejected. In addition, some of the proposed findings are omitted because they are irrelevant or not necessary to determine the material issues in this case.

To the extent that the following findings of fact also contain conclusions of law, they shall be deemed incorporated into the conclusions of law.

² Unless otherwise indicated, "Tr." preceding a page number refers to the transcript of the contested case hearing held on June 2-3, 1997; "Ex." followed by a number refers to the Executive Director's exhibits; "Ex." followed by a letter refers to Respondent's exhibits.

interviews. At that time Complainant's wife, Marilyn Hemaidan, worked as a secretary for Hilton Hawaiian Village and they had a young son. The family's financial situation was precarious. Complainant felt that as "the man of the house", he should be working, providing food and taking care of his family. Accordingly, he felt he had to find a stable, full time job with a future. (Tr. at 60-61, 83-88, 102-109, 125-126, 136, 146)

3. Respondent Life Support Systems Hawaii, Inc. is a Hawaii corporation which conducts safety inspections of life rafts and life vests on airplanes and boats. It employs three to five employees and has been doing business in Honolulu, Hawaii for over 20 years. (Stipulated Fact Nos. 1, 2; Tr. at 162, 176-177; Ex. 1 p. 20, Ex. 5a)

4. From about January 1994 Gary DiGirolamo (hereinafter "DiGirolamo") became the owner, president and chief operating officer of Respondent. Prior this, the company had problems with high staff turnover. (Tr. at 5, 18, 28-29, 162; Ex. 1 p. 13-14)

5. In April 1994 Respondent had an opening for a shop helper position. The shop helper's duties were to assist the company's life raft technicians in taking out, testing and repacking life rafts and life vests. Shop helpers were expected to eventually become life raft technicians. In order to become a life raft technician, a shop helper had to be trained and certified by the Federal Aviation Administration, the U.S. Coast Guard and at least seven different manufacturers (a total of 8-10 training sessions) to test and certify the safety of life rafts and life vests. Each

training session required approximately 5-7 days of out of state travel. Respondent company incurred costs of over \$10,000 per employee to complete these training sessions. (Stipulated Fact No. 3; Tr. at 7, 176-181; Ex. 1 p. 20-22, Ex. 5a)

6. Because of the time and costs involved in training shop helpers to become certified life raft technicians and its past turnover problems, Respondent sought applicants who planned to stay in Hawaii for an extended period of time and who could travel out of state for up to eight weeks. It also sought applicants who had marine/aviation experience and/or were fast learners, hard workers, responsible, and who could lift and pack life rafts, which weighed up to 500 pounds. (Stipulated Fact No. 8; Tr. at 8-9, 12, 17-18, 28-29, 178; Ex. 1 p. 16-18, Ex. 5a)

7. DiGirolamo was in charge of the hiring process. However, because he wanted to continue to foster the "family atmosphere" among Respondent's employees, DiGirolamo would not hire some one who would not get along with the existing staff. DiGirolamo saw the interview process as a way to "get to know" applicants in order to determine whether they would be compatible with existing staff. (Tr. at 7, 175-176; Ex. A)

8. Some time prior to April 20, 1994 Respondent ran an ad for its shop helper position in the Sunday Honolulu Advertiser. (Tr. at 7; Ex. 1 p. 15, Ex. 12)

9. On a Sunday prior to April 20, 1994, Complainant read Respondent's shop helper ad and called Respondent's office. On April 20, 1994 Complainant went to Respondent's office and filled

out an employment application form. A few days later Complainant called Respondent's office and obtained an interview date. (Stipulated Fact No. 4; Tr. at 41-45; Ex. 1 p. 16, Ex. 8)

10. On April 26, 1994 DiGirolamo interviewed Complainant. During the course of the interview, DiGirolamo asked Complainant how he pronounced his last name. He then asked Complainant where he was from. Complainant stated that he was from California. DiGirolamo then said, "No, what nationality are you?" When Complainant stated that he was Lebanese, DiGirolamo asked Complainant where he was born. After Complainant replied that he was born in Beirut, Lebanon, DiGirolamo then asked Complainant something about how he felt about terrorist activity or bombings in Lebanon. Complainant stated that he hadn't been in Lebanon for a long time and didn't know what was happening there. DiGirolamo then proceeded to ask Complainant what languages he spoke, when Complainant moved to California, why his family moved to California, if they still lived there and whether Complainant was a U.S. citizen. (Stipulated Fact Nos. 5, 7; Tr. at 8, 36-37, 45-50; Exs. 16, 17, A)

11. Respondent did not know that such questions were discriminatory and unlawful, and would not have asked them if it had known so. In addition, DiGirolamo did not ask the above questions in order to screen out Complainant because of his ancestry or national origin. DiGirolamo asked such questions because he wanted to "get to know" Complainant and because he wanted to determine whether Complainant was likely to stay in

Hawaii. (Tr. at 165-168, 170-171, 175-176)

12. During the course of the interview DiGirolamo also asked Complainant questions about his marital status. DiGirolamo asked Complainant why he came to Hawaii. When Complainant replied that he moved to Hawaii because his wife was local, DiGirolamo confirmed that Complainant was married and then asked questions about Complainant's wife's maiden name, her nationality, her age, where she worked, what her occupation was, who her supervisor was, whether she had family in the islands, her siblings' names and where they lived. DiGirolamo also asked Complainant if he had any children. When Complainant replied that he had a son, DiGirolamo asked how old Complainant's son was, what his son's name was and who was taking care of him. DiGirolamo then explained that the shop helper job involved obtaining out of state certification and asked whether the required travel would get in the way of childcare for Complainant's son. (Tr. at 20-21, 50-54, 170-171; Exs. 16, 17, A)

13. DiGirolamo asked the above marital status and family related questions because he believed that being married and having a family indicated that an applicant would be responsible and would stay in Hawaii. In addition, DiGirolamo asked the above questions to determine health insurance policy coverage and whether out of state travel would be a problem for an applicant's family. DiGirolamo also asked Complainant these questions because he was trying to be friendly and was trying to determine if they knew any of the same people. Again, Respondent did not know that such

questions were discriminatory and would not have asked them if it knew they were unlawful. (Tr. at 10-14, 21, 29, 32-33, 50-52, 165-168, 173, 175-176, 181-182; Exs. 5a, A)

14. At some point in the interview, DiGirolamo asked his shop manager, Ruford Nacino, to sit in and ask Complainant questions. Nacino asked Complainant how long he had lived in Hawaii, whether Complainant planned to stay in Hawaii, and why there were gaps in Complainant's employment history. They also discussed whether Nacino knew Complainant's in-laws. (Tr. at 55-58, 176; Ex. 17)

15. After returning home from the interview, Complainant became angry about the interview questions regarding his nationality, wife and family. Complainant felt that the questions were personal, unprofessional, discriminatory and had nothing to do with the shop helper job duties. Complainant thought that Respondent would use such questions to illegally screen out people of certain nationalities and people who were married. Complainant also thought he wasn't going to get the shop helper job because he was Lebanese and married. (Tr. at 59-61, 91-92, 112-113, 136, 147-151; Ex. 16)

16. Later that afternoon, Mrs. Hemaïdan returned home and they discussed the interview. Complainant was still angry because he felt the questions regarding his ancestry, family and marital status were personal, illegal and shouldn't have been asked. Mrs. Hemaïdan could not relate to Complainant's anger and frustration. Being from Hawaii, she felt such questions were not unusual, stated something like, "Maybe this is what it takes to get a job", and

they began to argue. (Tr. at 59-61, 136, 140, 152-153)

17. On or about April 28, 1994 (two days after the interview) Respondent notified Complainant by letter that he was not selected for the shop helper position. (Stipulated Fact No. 10; Exs. 4, 17)

18. Complainant then believed he was not hired because of his Lebanese ancestry and because he was married and had a child. This mistaken belief, combined with being unemployed for 10 months, made Complainant feel that there was racism in Hawaii and that he might never find a good job in the islands because of his ancestry. For approximately 2-3 months he became more angry and upset, and discouraged from continuing his job search. He became hostile, withdrawn and distant from his wife, son and friends and wanted to move back to Los Angeles. Complainant and his wife continued to argue about his reactions to the April 26, 1994 interview and argued about leaving Hawaii. One evening Complainant phoned his mother, told her he wanted to return home to Los Angeles and then argued with her when she encouraged him to stay in Hawaii. (Tr. at 60-75, 130-132, 134, 138-142, 147-151, 155-156; Exs. 16, 17)

19. Respondent hired a single Native American female, Debra Russell, for the shop helper position. Respondent hired Russell because she was a retired navy aviation mechanic who conducted aircraft safety inspections and repairs for 20 years and had experience working with life saving equipment. Respondent favorably considered Complainant's marital status and did not

consider his ancestry in its decision not to hire him.³ In fact, if Russell had declined the position, Respondent would have hired Complainant. (Stipulated Fact No. 11; Tr. at 12, 29-30, 33-34, 169, 170-171, 178-179; Ex. 1 p. 46, Exs. 2, 3, 5a, 5b, A)

20. On August 9, 1994 Complainant filed a complainant with this Commission. In his complaint, Complainant alleges that he was: 1) asked unlawful pre-employment questions regarding his marital status and national origin; and 2) denied the position of shop helper because of his marital status and national origin.

III. CONCLUSIONS OF LAW⁴

A. Jurisdiction

H.R.S. § 378-1 defines "employer" to mean

. . . any person . . . having one or more employees, but shall not include the United States.

The statute in turn defines "person" to include corporations. During the April 26, 1994 interview, Respondent was a corporation which employed more than one employee. I therefore conclude that Respondent is an employer under H.R.S. § 378-1 and is subject to the provisions of H.R.S. Chapter 378.

³ At the time the complaint was filed, Respondent had four employees: a single Filipino male, a single Native American female, a married Black Jamaican male, and a married Mexican female. (Ex. A)

⁴ To the extent that the following conclusions of law also contain findings of fact, they shall be deemed incorporated into the findings of fact.

B. LIABILITY

1. Marital Status Discrimination

The Executive Director asserts that Respondent violated H.R.S. § 378-2(1)(C) and H.A.R. §§ 12-46-121 et. seq. when DiGirolamo asked Complainant questions about his marital status during the April 26, 1994 interview.

H.R.S. § 378-2(1)(C) states in relevant part:

It shall be an unlawful discriminatory practice:

(1) Because of . . . marital status . . .

(C) For any employer . . . to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination . . .

H.A.R. § 12-46-121 states:

General policy. Chapter 378, HRS, prohibits any employer or other covered entity from discriminating in employment because of the individual's marital status. Chapter 378, HRS, and policies apply to males and females alike.

H.A.R. § 12-46-123(b) states in relevant part:

(b) A pre-employment inquiry or application shall not ask:

- (2) Single, married, divorced, widowed, separated, etc.; or
- (3) Name and ages of spouse and children; or
- (4) Spouse's place of employment . . .

Pre-employment inquiries regarding an applicant's marital status, however, do not violate the above statute and rules if they fall under one of the exceptions contained in H.R.S. § 378-3. For instance, under H.R.S. § 378-3(2) and H.A.R. § 12-46-122, employers may establish marital status as a bona fide occupational qualification (BFOQ) for a job position if marital status is reasonably necessary to the normal operation of a particular

business and has a substantial relationship to the functions and responsibilities of the prospective employment.⁵

In the present case, Respondent admits that DiGirolamo asked Complainant and other applicants questions regarding their marital status. Complainant also credibly testified that DiGirolamo asked questions about Complainant's wife's maiden name, her age, her place of employment, the names and location of her family members, as well as the name and age of Complainant's son.

Respondent asserts that it asked such questions because it was trying to determine whether Complainant: a) planned to stay in Hawaii; b) was responsible; and c) could travel out of state for extended periods of time. Respondent believed that being married and having a family was an indication of an applicant's dependability and longevity in Hawaii. However, Respondent did not present evidence to show any correlation between being married and having such traits. In fact, Respondent found such traits in an unmarried and apparently childless person when it hired Russell.⁶

⁵ The burden of proving that marital status is a BFOQ rests upon the employer and such exception is strictly and narrowly construed. H.A.R. § 12-46-122. Accordingly, this Commission has held that in order to establish a BFOQ, employers are required to show, inter alia, that the essence of a business operation would be undermined by the hiring or retention of persons in the protected class. In Re Shaw / Sam Teague, Ltd. et al., Docket No. 94-001-E-P; March 3, 1995.

⁶ Respondent could have determined stability, responsibility and the ability to travel out of state without regard to marital status by asking: "How long do you plan to live in Hawaii?"; "Can you commit to this job for x years?"; "Can you describe (or submit references which describe) any past employment or personal experiences which demonstrate your ability to act or work and responsibly?"; or "Can you travel out of state for periods of up to x weeks per year?"

Because Respondent's marital status inquiries do not fall under any of the exceptions found in H.R.S. § 378-3, I conclude that Respondent violated § 378-2(1)(C) and H.A.R. §§ 12-46-121 and 12-46-123(b).

2. Ancestry Discrimination

The Executive Director asserts that Respondent violated H.R.S. § 378-2(1)(C) and H.A.R. §§ 12-46-171 et. seq. when it asked Complainant questions about his ancestry during the April 26, 1994 interview.

H.R.S. § 378-2(1)(C) states in relevant part:

It shall be an unlawful discriminatory practice:

(1) Because of . . . ancestry . . .

(C) For any employer . . . to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination;

H.A.R. § 12-46-171 states in relevant part:

General policies. (a) Chapter 378, HRS, prohibits any employer . . . from discriminating in employment because of ancestry, except where ancestry is a bona fide occupational qualification.

H.A.R. § 12-46-177(b) states in relevant part:

(b) A pre-employment interview . . . shall not include questions . . . that would tend to disclose a person's ancestry. Examples of such questions . . . are:

(1) "Of what country are you a citizen?"

(4) Birthplace of applicant;

(6) Applicant's nationality, ancestry, national origin, descent, or parentage;

(7) Language commonly used by applicant;

(8) How applicant acquired the ability to read, write or speak a foreign language . . .

Therefore, pre-employment questions regarding an applicant's ancestry violate the above statute and rules unless ancestry is a BFOQ.

In the present case, Complainant credibly testified that Respondent asked him questions about his nationality, where he was born, when he immigrated to the United States, whether he was a U.S. citizen and what languages he spoke. Respondent did not assert that ancestry was a BFOQ, or was in any way relevant to the shop helper position. While it explained that it would not have asked such questions if it were aware of the law, it also admitted that ignorance of the law is not a defense. (Tr. at 162, 165) I therefore conclude that Respondent is liable for violating H.R.S. § 378-2(1)(C) and H.A.R. §§ 12-46-171 and 12-46-177(b).

C. REMEDIES

The Executive Director requests that Respondent be ordered to pay Complainant \$35,000 compensatory damages for emotional distress. The Executive Director also seeks various forms of equitable relief.

1. Compensatory Damages

Pursuant to H.R.S. §368-17, the Commission has the authority to award compensatory damages for any pain, suffering, embarrassment, humiliation, emotional distress, loss of enjoyment of life or other injury Complainant suffered as a result of

Respondent's unlawful pre-employment inquiries.⁷ The amount awarded as compensatory damages is generally based on a consideration of the extent to which Respondent's discriminatory conduct caused the harm and the extent to which other factors, if any, also caused the harm.⁸ It should also reflect the nature, severity and duration or expected duration of the harm. Restatement of Torts 2d § 905 (1979); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. N 915.002 (July 14, 1992), EEOC Compliance Manual § 603; Montalvo v. Lapez, 77 Haw. 282, 306 (1994).

Complainant claimed that solely as a result of Respondent's unlawful inquiries, he became upset and angry, lost his self esteem, became discouraged from continuing his job search, became distant from his wife, child and friends, lost his appetite, lost

⁷ I do not find or conclude, and the Executive Director does not claim, that Respondent screened out and/or failed to hire Complainant because of his marital status or ancestry. The evidence shows that Respondent preferred applicants who were married with children and reacted favorably to Complainant's married status. The evidence also shows that Respondent did not consider Complainant's Lebanese ancestry when it chose not to hire him. Therefore, because Respondent's only discriminatory conduct was its unlawful inquiries, Complainant may recover compensatory damages only for the emotional distress which resulted from the unlawful inquiries.

⁸ Complainant therefore may not recover compensatory damages for emotional distress caused by participation in the HCRC investigation and hearing process. Complainant testified that after he secured employment in June 1994, most of his emotional distress abated. Complainant claimed, and the Executive Director concedes, that Complainant felt stressed again in April 1996 only after he started to prepare for the conciliation and hearing in this case. (See, Tr. at 75, 80-81, 132-133; Executive Director's Post Hearing Memorandum of Law at 7.) Therefore, the substantial factor which brought about Complainant's 1996 emotional distress was his participation in the HCRC hearing process, not Respondent's initial discriminatory conduct. See, Rountree v. Glickman, EEOC Appeal No. 01931906, 1995 WL 413533 (July 7, 1995); reconsideration denied, EEOC Appeal No. 01941906, 1996 WL 77396 (February 15, 1996) (compensatory damages not available for emotional distress and depression caused by the stress of participating in the EEO process).

weight, lost sleep, argued with his wife almost every other day, argued once with his mother and felt stressed for approximately 2 - 3 months after the April 26, 1994 interview. (Tr. at 59-75) Complainant stated that after he became employed in June 1994 he felt better, but still had some lingering distress. (Tr. at 130-132 134) Complainant testified that he suffered the above emotional injuries because he felt Respondent's inquiries were "personal" and "unprofessional". (Tr. at 112-113)

I find Complainant's testimony regarding the nature and extent of his emotional injuries caused solely by Respondent's unlawful inquiries not wholly plausible. This is because: a) Complainant's demeanor, manner and tone of voice did not appear to be credible during this portion of his testimony; b) his testimony conflicted; and c) his testimony was inconsistent with his prior statements and the testimony of Mrs. Hemaïdan.⁹

Complainant maintained that none of his emotional distress stemmed from assuming that Respondent's inquiries would be used to screen him from the shop helper position, or believing that Respondent did not hire him because he was Lebanese and married. Complainant testified that he did not know if Respondent's questions were illegal, that he had no thoughts as to whether Respondent might use such inquiries to screen him from the shop helper position, and that he had no idea why Respondent didn't hire him. (Tr. at 112-116, 128-129) Complainant also denied suffering

⁹ Complainant's demeanor during Mrs. Hemaïdan's testimony also appeared to affect portions of her testimony.

any emotional distress from being unemployed for 10 months. (Tr. at 119-121)

Such testimony is conflicting and inconsistent with Complainant's prior statements. At the hearing, Complainant testified that after the interview he was "so angry", "ticked off" and felt "[I] should be working . . . and like, cannot get a job because where I'm from or . . . because of my name, my ancestry". (Tr. at 60-61) He also stated, ". . . I thought having kids, maybe, you know, having a child, keep me back from not working . . . I just came out feeling, why should I have kids? . . . Why should I be married?" (Tr. at 69)

In his May 10, 1994 pre-complaint questionnaire Complainant wrote that he was "stripped from my rights as an applicant"; that the inquiries "show that [DiGirolamo] was definitely screening applicants beyond just education and work experience [sic]"; and indicated that he believed he was refused employment because of his race, marital status and national origin/ancestry. (Ex. 16) In his June 15, 1994 intake interview Complainant stated that he felt Respondent failed to hire him because of his marital status and race/ancestry. (Ex. 17) Finally, in his complaint filed on August 9, 1994 Complainant states, "I believe that I was subjected to discriminatory practices which included improper pre-employment inquiries and denied the position of Shop Helper because of my marital status (married) and ancestry/national origin (Lebanese)". (Emphasis added).

Furthermore, Complainant's testimony is contrary to the testimony of his wife. Mrs. Hemaïdan recalled that after the April 26, 1994 interview, Complainant stated that he felt certain questions were illegal and discriminatory, and that he wasn't going to get the job because of his national origin. (Tr. at 136, 151, 154-155) Mrs. Hemaïdan stated that prior to the interview, Complainant was aware of racism in Hawaii, but the interview was the first time Complainant felt he had experienced such racism in the islands. (Tr. at 138-139, 147-149) She also testified that Complainant began to feel that he would not be able to secure a decent job in Hawaii because of his ancestry, and often stated that he wanted to leave the islands. (Tr. at 138-139, 141)

Thus, the weight of the evidence shows that immediately after the interview, Complainant thought that Respondent's inquiries were discriminatory and illegal and that they would be used to deny him the shop helper position. The evidence also shows that 2-3 days after the interview (upon receipt of Respondent's letter notifying him that the position was filled), Complainant believed that Respondent did not hire him because of his martial status and ancestry. The evidence also shows that these perceptions caused Complainant to become very upset, irritated, short tempered and distant from his family.

Finally, Complainant's allegation he suffered no emotional distress from being unemployed for 10 months is unlikely given his testimony regarding his need to secure employment. Complainant stated that as "the man of the house", it was very important for

him to feed and take care of his family and that he had to find a stable job that had decent pay and a future. Complainant indicated that his unemployment caused a financial strain on the family because they would not have been able to survive without his unemployment insurance benefits. (Tr. at 105-106, 108-109) Mrs. Hemaïdan testified that during Complainant's 10 months of unemployment, he had weekly job interviews, but could not secure a job. She also testified that Complainant was frustrated and upset about his unemployment. (Tr. at 146, 156)

In summary, I find that Respondent's unlawful inquiries initially caused Complainant to become upset and angry because he felt such questions were personal, unprofessional and illegal. However, I also find that the major portion and extent of Complainant's emotional distress stemmed from other factors, such as: a) Complainant's mistaken assumption that Respondent would use such inquiries to screen him from the job because of his ancestry and marital status; b) his mistaken belief that Respondent did not hire him because of his ancestry and marital status; c) being unemployed for 10 months; and d) believing that he would not be able to secure a good job in Hawaii because of his ancestry.

Based on the above considerations, I determine that \$7,000 is appropriate compensation for Complainant's emotional distress caused by Respondent's unlawful inquiries.

2. Equitable Relief

The Executive Director also seeks to have the Commission:

- a) issue an order directing Respondent to cease and desist from further discriminatory practices against other applicants or employees based on their ancestry/national origin and marital status;
- b) require Respondents to submit to the Executive Director for approval a policy statement against employment discrimination which:
 - defines all bases of employment discrimination;
 - defines the types of unlawful inquiries;
 - contains procedures for submitting complaints to Respondent and to the Hawaii Civil Rights Commission;
 - contains procedures for Respondent to promptly, fully and objectively investigate complaints that are submitted to it;
 - contains disciplinary measures Respondent will take to punish offenders;
- c) require Respondent to permanently post such policy statement, within fourteen (14) days of the Executive Director's approval, in a conspicuous place on its premises;
- d) require Respondent to conduct training on such policy statement, within fourteen (14) days of the Executive Director's approval, for its managers and supervisors;
- e) require Respondents to reimburse the Executive Director the costs of publishing the results of this case in the Honolulu Advertiser (or other newspaper having a general circulation in the City and County of Honolulu) Sunday edition and once during the following week within 6 weeks of the Commission's final order in this case.

Because Respondent asked Complainant unlawful pre-employment questions, I recommend that the Commission order Respondent to immediately cease and desist from making further discriminatory pre-employment inquiries or engaging in any other discriminatory practices based on ancestry and marital status against other applicants and current employees.

Respondent has an Equal Employment Opportunity policy statement which contains procedures for reporting discriminatory conduct and disciplinary measures. (Ex. 4) Such policy statement, however, does not state all the bases for illegal discrimination, does not discuss unlawful inquiries, does not include procedures for filing complaints with this Commission, and does not contain procedures for investigating internal complaints. I therefore recommend that the Commission order Respondent to revise its policy statements to include the above and to submit such revised statement to the Executive Director for approval within thirty (30) days of this Commission's final decision.

The Commission should also order Respondent to post the revised policy and conduct training on such policy with its managers and supervisors within fourteen (14) days of the Executive Director's approval.

The best way to publicize this decision to the public is to publish the attached Public Notice (Exhibit 1) in the Honolulu Advertiser (or in a newspaper having a general circulation in Honolulu, Hawaii) Sunday edition and one following weekday.

IV. RECOMMENDED ORDER

Based on the matters set forth above, I recommend that the Commission find and conclude that Respondent Life Support Systems Hawaii, Inc. violated H.R.S. § 378-2(1)(C) and H.A.R. §§ 12-46-121, 12-46-123(b), 12-46-171 and 12-46-177(b) by asking Complainant Bassam A. Hemaidan unlawful pre-employment questions regarding his

ancestry and marital status.

For the violations found above, I recommend that pursuant to H.R.S. § 368-17, the Commission should order:

1. Respondent to pay Complainant \$7,000 as damages in compensation for his emotional injuries caused by Respondent's unlawful inquiries.

2. Respondent to immediately cease and desist from making further discriminatory pre-employment inquiries or engaging in any other discriminatory practices on the basis of ancestry and marital status against other applicants and current employees.

3. Respondent to revise its Equal Employment Opportunity policy statement within thirty (30) days of this Commission's final decision in this matter to: a) state all the bases for illegal discrimination; b) discuss unlawful inquiries; c) include procedures for filing complaints with this Commission; and d) contain procedures for investigating internal complaints.

4. Respondent to post such revised policy, within fourteen (14) days of the Executive Director's approval, in a conspicuous place on its premises.


5. Respondent to conduct training on such policy with its managers and supervisors within fourteen (14) days of the Executive Director's approval.

6. Respondent to reimburse the Executive Director for costs incurred in publishing the attached Notice (Exhibit 1) in the Honolulu Advertiser (or a newspaper having a general circulation in the City and County of Honolulu) Sunday edition and on one

following weekday within 6 weeks of the Commission's final decision
in this matter.

Dated: Honolulu, Hawaii, July 11, 1997.

HAWAII CIVIL RIGHTS COMMISSION


LIVIA WANG
Hearings Examiner

Copies sent to:

Karl K. Sakamoto, Esq. HCRC Deputy Director
Gary DiGirolamo, Life Support Systems Hawaii, Inc.

EXHIBIT 1

PUBLIC NOTICE

published by order of the
HAWAII CIVIL RIGHTS COMMISSION
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
STATE OF HAWAII

After a full hearing, the Hawaii Civil Rights Commission has found that Respondent Life Support Systems Hawaii, Inc. violated Hawaii Revised Statutes Chapter 378, Employment Discrimination, and Hawaii Administrative Rules §§ 12-46-121, 12-46-123, 12-46-171 and 12-46-177 when it made unlawful pre-employment inquiries regarding an applicant's marital status, his wife's maiden name and age, his wife's place of employment, his child's name and age, and the applicant's citizenship, birthplace, nationality, national origin and languages that the applicant spoke.

(William D. Hoshijo, Executive Director, on behalf of the complaint filed by Bassam A. Hemaidan v. Life Support Systems Hawaii, Inc., Docket No. 96-008-E-NO-MS, [date of final decision] 1997).

The Commission has ordered Respondent company to pay for the publication of this Notice and to:

- 1) Pay that applicant an award to compensate him for emotional injuries he suffered.
- 2) Immediately cease and desist from further discriminatory practices on the basis of marital status and ancestry.
- 4) Require Respondent company to revise its Equal Employment Opportunity policy and conduct training on such policy.
- 5) Post such revised policy in a conspicuous place on company premises.

DATED: _____

BY: _____
Authorized Agent for
Life Support Systems Hawaii, Inc.

APPENDIX A

On August 9, 1994 Complainant Bassam A. Hemaïdan filed a complaint with this Commission alleging that Respondent Life Support Systems Hawaii, Inc. subjected him to improper pre-employment inquiries and denied him the position of shop helper based on his marital status and ancestry.

On December 11, 1996 the complaint was docketed for hearing and a Notice Of Docketing Of Complaint was issued.

The Executive Director filed its Scheduling Conference Statement on December 30, 1996. A scheduling conference was held on January 22, 1997 and the Scheduling Conference Order was issued that day. On April 3, 1997 an Amended Scheduling Conference Order was issued.

On May 9, 1997 notices of hearing and pre-hearing conference were issued. On May 15, 1997 the Executive Director filed its pre-hearing conference statement. On May 27, 1997 a pre-hearing conference was held and on that date a pre-hearing conference order was issued.

Pursuant to H.R.S. Chapters 91 and 368, the contested case hearing on this matter was held on June 2 and 3, 1997 at the Hawaii Civil Rights Commission conference room, 830 Punchbowl Street, room 411, Honolulu, Hawaii before the undersigned Hearings Examiner. The Executive Director was represented by Deputy Director Karl K. Sakamoto. Complainant Hemaïdan was present during portions of the hearing. Respondent was represented by its President, Gary DiGirolamo, who waived Respondent's right to be present during

closing arguments.

Pursuant to a request by the Hearings Examiner, on June 6, 1997 the Executive Director submitted Exhibits 15, 16, 17 and A to the Hearings Examiner. On June 6, 1997 these Exhibits were labeled and admitted into evidence.

On June 23, 1997 the Executive Director filed a post-hearing brief.