

NOT FOR PUBLICATION

NO. 25358

IN THE INTERMEDIATE COURT OF APPEALS
 OF THE STATE OF HAWAI'I

IN THE MATTER OF APPOINTMENT OF AN ARBITRATOR FOR THE
 DISPUTE BETWEEN RESIDUARY LIMITED PARTNERSHIP, BY
 KANEOHE RANCH COMPANY, LIMITED, ITS GENERAL PARTNER,
 Petitioner-Appellee, v. KNUD LINDGARD and COLETTE
 ANDREE LINDGARD, Respondents-Appellants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
 (S.P. No. 01-1-0204)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim, and Foley, JJ.)

Respondents-Appellants Knud Lindgard and Colette Andree Lindgard (the Lindgards) appeal: (1) the order entered by the Circuit Court of the First Circuit (the circuit court)^{1/} on August 28, 2002 that (a) confirmed an April 17, 2002 award by a three-appraiser arbitration panel in favor of Petitioner-Appellee Residuary Limited Partnership, by Kaneohe Ranch Company, Limited, its general partner (RLP), and (b) denied the Lindgards' motion to vacate the same arbitration award (the August 28, 2002 Order); and (2) the Final Judgment entered by the circuit court on August 28, 2002 in favor of RLP and against the Lindgards, following the entry of the August 28, 2002 Order. The arbitration award determined that for the period from July 1, 1996 to and including December 31, 2012, the Lindgards owed RLP

^{1/} Judge Sabrina S. McKenna (Judge McKenna) presided.

\$7,000 net annual ground lease rent for property in Kailua, O'ahu that they were leasing from RLP.

The Lindgards' arguments on appeal revolve around the composition of the arbitration panel that determined the revised lease amount. Specifically, the Lindgards contend that the circuit court erred:

(1) In disqualifying Charles A. Shipman, Jr. (Shipman) as the Lindgards' choice of arbitrator because "the undisputed evidence was that Shipman would adhere to the impartiality principals [sic] embodied in [the Uniform Standards of Professional Appraisal Practice]";

(2) In replacing Shipman with Paul D. Cool, MAI (Cool) because Cool was proposed by RLP, "foisted upon the Lindgards as their choice[,]" and "had been specifically rejected as a choice for the neutral third arbitrator because of his work for RLP";

(3) In granting RLP's motion to confirm the arbitration award and in denying the Lindgards' motion to vacate the arbitration award because "the award was infected with the evident partiality of the arbitration panel and because the Lindgards had no say in the selection of anyone on the panel"; and

(4) In granting the motion to confirm the arbitration award and in denying the motion to vacate the arbitration award because "the award clearly violated the explicit, well-defined and dominant public policy encompassed in Chapter 466K of the

NOT FOR PUBLICATION

Hawaii Revised Statutes" concerning the standards to be applied by real estate appraisers in this State.

Our review of the record indicates that the Lindgards were provided with multiple opportunities to select an impartial appraiser of their choice for the arbitration panel but repeatedly failed to do so. They also directed Shipman, the appraiser they had appointed to the panel, to complete an appraisal of the property for their own use, thereby calling into question Shipman's impartiality and prompting the circuit court to disqualify Shipman from the panel. Under the terms of the lease documents between RLP and the Lindgards, the circuit court was required to select an appraiser if a party failed to do so. The Lindgards should not now be heard to complain about the composition of a panel that they did everything in their power to delay the convening of.

Accordingly, the Lindgards' arguments have no merit, and we affirm the circuit court's August 28, 2002 Order and August 28, 2002 Final Judgment.

DATED: Honolulu, Hawai'i, March 18, 2005.

Knud Lindgard and Colette
Andree Lindgard, respondents-
appellants, pro se (Carl H.
Osaki for them on the briefs).

Rosemary T. Fazio (Ashford &
Wriston, of counsel) on the
brief for petitioner-appellee.

Corinne K. A. Watanabe



Charles R. Fazio