

\*\*\* NOT FOR PUBLICATION \*\*\*

NO. 26864

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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J.P. SCHIMIDT, in his capacity as Insurance Commissioner of the  
State of Hawai'i, Petitioner-Appellee

vs.

PACIFIC GROUP MEDICAL ASSOCIATION, a Mutual Benefit Society,  
Respondent

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THOMAS T. UENO, C.P.A., Party In Interest-Appellant

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APPEAL FROM THE FIRST CIRCUIT COURT  
(S.P. NO. 97-0135)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, and Duffy, JJ.  
and Circuit Judge August in place of Acoba, J., recused)

Upon review of the record, it appears that the judgment entered on August 12, 2004 was the appealable final judgment on appellant Thomas Ueno's claim against the liquidating trust. The judgment was appealable by notice of appeal filed by September 13, 2004. See HRAP 4(a)(1) ("[T]he notice of appeal shall be filed within 30 days after entry of the judgment[.]").

Appellant's notice of appeal was prepared, signed and served on September 2, 2004, but was not filed until October 1, 2004. The notice of appeal filed on October 1, 2004 is an untimely appeal of the August 12, 2004 judgment and we lack jurisdiction over this appeal. See HRAP 4(a)(1) and 26(b); Bacon v. Karlin, 68 Haw. 648, 650, 727 P.2d 1127, 1128 (1986) (The failure of an

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appellant to file a timely notice of appeal in a civil matter is a jurisdictional defect that can neither be waived by the parties nor disregarded by the appellate court in the exercise of judicial discretion). Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, January 28, 2005.