
NO. 24567

IN THE SUPREME COURT OF THE STATE OF HAWAII

BENI-JO N. KUAMOO, Appellant-Appellant

vs.

HAWAIIAN HOMES COMMISSION, Appellee-Appellee

APPEAL FROM THE THIRD CIRCUIT COURT
(CIV. NO. 97-402)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama,
Acoba, and Duffy, JJ.)

Appellant-Appellant Beni-Jo N. Kuamoo (Appellant) appeals from the August 21, 2001 judgment of the circuit court of the third circuit (the court)¹ affirming the July 31, 1997 findings of fact, conclusions of law, and decision and order of Appellee-Appellee Hawaiian Homes Commission (HHC or the Commission).

On May 3, 1996, the HHC hearings officer issued findings of fact (findings), conclusions of law (conclusions) and a Recommended Order (proposed order). The hearings officer concluded inter alia that Appellant was in default on Department of Hawaiian Home Lands (DHHL) Contract of Loan No. 14004 (hereinafter "loan") apparently secured by DHHL Lease No. 6329 dated April 22, 1986. The hearings officer recommended that all interests of Appellant be forfeited and Lease No. 6329 be

¹ The Honorable Greg K. Nakamura presided.

cancelled, but that if Respondent paid \$265 for a period of three months, she would be allowed to refinance her loan. Appellant made these payments.

By a letter dated June 26, 1996, Appellant was notified of a hearing on whether to adopt the hearings officer's findings, conclusions, and proposed order. The notice letter informed Appellant of her right to file written exceptions to the proposed order. Appellant did not attend the August 26, 1996 hearing and filed no written exceptions.

At the hearing, the HHC, under recommendation by DHHL staff, adopted the findings, conclusions, and proposed order with modifications, requiring Appellant to make two additional monthly payments for August and September of 1996, before becoming eligible to refinance her loan. The Commission issued its order on July 31, 1997. Appellant was served with a certified copy. However, there is no evidence in the record that Appellant requested reconsideration of the Commission's order or that Appellant made the two additional loan payments required to qualify for refinancing her loan. On August 29, 1997, Appellant filed a notice of appeal to the court.

On August 21, 2001, the court entered judgment affirming the Commission's findings, conclusions, and order. Appellant appealed to this court on September 19, 2001.

As best as can be ascertained, Appellant contends that (1) the court reversibly erred in not considering evidence of the

illegality of the Commission/DHHL action under Hawai'i Constitution Article XII's compact clause,² and (2) the court reversibly erred by failing to prevent the State Attorney General and DHHL officials from committing wrongs, conspiracy, or fraud by foreclosing on Appellant's loan.

Review of a decision made by the circuit court upon its review of an agency decision is a secondary appeal. Curtis v. Bd. of Appeals, County of Hawai'i, 90 Hawai'i 384, 392, 978 P.2d 822, 830 (1999). "The standard of review is one in which this court must determine whether the circuit court was right or wrong in its decision, applying the standards set forth in HRS [§] 91-14(g) (1993) to the agency's decision."³ Konno v. County of

² Article XII of the Hawai'i State Constitution, Hawaiian Affairs, Section 2, Acceptance of Compact, provides:

The State and its people do hereby accept, as a compact with the United States, or as conditions or trust provisions imposed by the United States, relating to the management and disposition of the Hawaiian home lands, the requirement that section 1 hereof be included in this constitution, in whole or in part, it being intended that the Act or acts of the Congress pertaining thereto shall be definitive of the extent and nature of such compact, conditions or trust provisions, as the case may be. The State and its people do further agree and declare that the spirit of the Hawaiian Homes Commission Act looking to the continuance of the Hawaiian homes project for the further rehabilitation of the Hawaiian race shall be faithfully carried out.

³ HRS Section 91-14(g) provides:

Upon review of the record the court may affirm the decision of the agency or remand the case with instructions for further proceedings; or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions or orders are:

- (1) In violation of constitutional or statutory provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or

(continued...)

Hawai'i, 85 Hawai'i 61, 77, 937 P.2d 397, 413 (1997). At the contested case hearing, Appellant did not raise the issues she now raises on appeal. Appellant asked only that her mortgage rate be reduced. This court will only consider the issues Appellant properly raised in the contested case hearing. See HOH Corp. v. Motor Vehicle Ind. Licensing Bd., 69 Haw. 135, 141, 736 P.2d 1271, 1275 (1987) (holding that the scope of judicial review of an agency decision is limited to "issues properly raised in the record" of the administrative hearing).

Appellant did not contest any of the findings at the contested case hearing. Appellant did not submit written exceptions to the hearings officer's findings, conclusions, and proposed order. After receiving the Commission's final findings, conclusions, and decision and order, Appellant did not request reconsideration. "Findings of fact . . . that are not challenged on appeal are binding on the appellate court." Okada Trucking Co., Ltd. v. Bd. of Water Supply, 97 Hawai'i 450, 458, 40 P.3d 73, 81 (2002); see also Poe v. Hawai'i Labor Relations Bd., 97 Hawai'i 528, 536, 40 P.3d 930, 938 (2002) (explaining that "[u]nchallenged findings are binding on appeal"). Hence, this court is bound by the hearings officer's findings in the

³(...continued)

- (3) Made upon unlawful procedure; or
- (4) Affected by other error of law; or
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, or capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

contested case hearing. Furthermore, there is reliable, probative, and substantial evidence in the record that supports the findings by the hearings officer. The contract of Loan in the record demonstrates that Appellant took a loan for \$35,000. Appellant testified at the contested case hearing that she was delinquent on her loan. There is substantial evidence to support the facts that she received notice of the contested case hearing and attended, that she received notice of the Commission's hearing and did not attend, and that Appellant received the Commission's final order. There is no evidence Appellant asked for reconsideration of the Commission's order or complied with its terms. Therefore,

In accordance with Hawai'i Rules of Appellate Procedure Rule 35, and after carefully reviewing the record and the briefs submitted by the parties, and duly considering and analyzing the law relevant to the arguments and issues raised by the parties,

IT IS HEREBY ORDERED that the court's August 21, 2001 judgment, from which the appeal is taken, is affirmed.

DATED: Honolulu, Hawai'i, April 19, 2004.

On the briefs:

Beni-Jo N. Kuamoo,
appellant-appellant,
pro se.

Clayton Lee Crowell,
Deputy Attorney General,
for appellee-appellee.