

NO. CAAP-17-0000552

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

PRINCETON YAMAGUCHI, Claimant-Appellee, v.
NATIONAL TROPICAL BOTANICAL GARDENS, Employer-Appellee, and
ISLAND INSURANCE, Insurance Carrier-Appellee, and
NA OLA MANA, LLC., Appellant

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(CASE NO. AB 2017-050(K) (DCD NO. 4-11-00600))

ORDER GRANTING MOTION TO DISMISS APPEAL

(By: Reifurth, Presiding Judge, Chan and Hiraoka, JJ.)

Upon consideration of Claimant-Appellee Princeton Yamaguchi's (Yamaguchi) November 13, 2018 Motion to Dismiss Appeal (Motion), the papers in support, the record, and there being no opposition, it appears that:

(1) On September 15, 2017, the Chief Clerk of the Labor and Industrial Relations Appeals Board filed the record on appeal;

(2) On September 18, 2017, the appellate clerk notified the parties that the statement of jurisdiction and opening brief were due on or before September 25, 2017, and October 25, 2017, respectively;

(3) Appellant-Appellant Na Ola Mana, LLC (Na Ola Mana) failed to file the statement of jurisdiction and opening brief, or request an extension for either document;

(4) On November 13, 2018, Yamaguchi filed the instant Motion to dismiss the appeal, under Hawai'i Rules of Appellate Procedure (Rule) 30, for failure to file the statement of jurisdiction and opening brief;

(5) A response to the Motion was due on or before November 20, 2018, see HRAP Rules 26(a) & 27(a), but none was filed;

(6) On March 7, 2019, the appellate clerk entered a notice of default for the statement of jurisdiction and opening brief, indicating the matter would be called to the court's attention on March 18, 2019, for action that could include dismissal, under HRAP Rules 12.1(e) and 30, and Na Ola Mana could seek relief from default by motion;

(7) The appellate clerk mailed the default notice to Na Ola Mana at the address indicated in the notice of appeal and record on appeal. The United States Postal Service returned the notice as undeliverable. Na Ola Mana has not filed a notice of change of address, as required by HRAP Rule 25(f), and it took no further action in this appeal; and

(8) HRAP Rule 12.1(e) (2018) states, "Failure to file a statement of jurisdiction may result in sanctions, including dismissal of the appeal following notice and a meaningful opportunity to be heard." HRAP Rule 30 (2018) provides, in part:

When the brief for appellant is not filed within the time required, the appellate clerk shall forthwith give notice to the parties that the matter will be called to the attention of the appellate court on a day certain for such action as the appellate court deems proper and that the appeal may be dismissed.

Because Na Ola Mana failed to file the statement of jurisdiction and opening brief within the time required, failed to file a notice of change of address as required by HRAP Rule 25(f),

and took no further action in this appeal, the court will grant the instant Motion.

Therefore, IT IS HEREBY ORDERED that the Motion is granted and the appeal is dismissed.

DATED: Honolulu, Hawai'i, March 20, 2019.

Presiding Judge

Associate Judge

Associate Judge