

FIRST CIRCUIT COURT
STATE OF HAWAII
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

LEONA KALIMA, *et al.*

Plaintiffs,

vs.

STATE OF HAWAII; *et al.*

Defendants.

) CIVIL NO. 99-4771-12 VLC
) (Class Action)
)
) ORDER GRANTING PLAINTIFFS'
) MOTION TO ESTABLISH CLAIMS
) ADMINISTRATION PROCESS TO
) RESOLVE ALL CLAIMS, FILED
) NOVEMBER 9, 2016; EXHIBIT "1"
)
)
)
)
)
) HEARING DATES: November 30, 2016,
) 9:00 a.m. and January 30, 2017, 9:30 a.m.
) JUDGE: Honorable Virginia Lea Crandall
)
)
)
)

EXHIBIT

"B"

PLEASE NOTE CHANGES

ORDER GRANTING PLAINTIFFS' MOTION TO ESTABLISH CLAIMS
ADMINISTRATION PROCESS TO RESOLVE ALL CLAIMS. FILED NOVEMBER 9, 2016

Plaintiffs' Motion to Establish Claims Administration Process to Resolve All Claims, filed November 9, 2016, was heard on November 30, 2016 at 9:00 a.m. and on January 30, 2017 at 9:30 a.m. by the Honorable Virginia L. Crandall. Class Counsel Thomas R. Grande and Carl M. Varady appeared for Plaintiffs, and State of Hawai'i Deputies Attorneys General Charleen M. Aina, Matthew S. Dvonch, Donna H. Kalama and Jennifer C. Carson appeared for Defendants.

The Court having considered the memoranda, declarations, exhibits and oral argument of counsel, the records and files and good cause appearing therefor,

The Court GRANTS the motion as follows:

THE COURT FINDS AND IT IS HEREBY ORDERED that a Claims Administration process shall be established, subject to any appellate rulings and subject to the continuing jurisdiction of this Court, as follows:

The Special Master shall supervise the Claims Administration Process and have authority to appoint a Claims Administrator to perform the ministerial work of processing all Waiting List Damages Subclass members' damages claims. The Special Master shall resolve any disputed legal or factual issues, which then may be appealed to the Court.

Any documentary evidence submitted to the Hawaiian Claims Office (hereafter "HCO") may be submitted to and considered by the Claims Administrator, Special Master or the Court. The Hawaiian Claims Office investigative reports may be submitted to and considered by the Claims Administrator, Special Master or the Court, to the extent they provide factual or other

information. Investigators' legal conclusions or damages calculations in the investigative report, if any, are not binding on the Claims Administrator, Special Master or the Court.

During the pendency of any appeal of the judgment entered with respect to the Waiting List Subclass claims, the Court directs the Parties to meet and confer to resolve issues of whether specific claimants do not meet the jurisdictional requirements of the instant case or, for other reasons, their claims are barred. The Court finds that such work does not impact the finality of the judgment that would be entered.

A. **DUTIES OF CLAIMS ADMINISTRATOR, SPECIAL MASTER AND COURT.**

The Special Master shall:

1. Carry out all Court-ordered notice procedures implemented to provide notice to members of the Waiting List Damages Subclass according to terms imposed by the Court;
2. Receive all proofs of claim from members of the Waiting List Damages Subclass;
3. Determine whether claimants meet the criteria to qualify as a member of the Waiting List Damages Subclass;
4. Rule on discovery requests and disputes between the parties;
5. Conduct evidentiary hearings on claims, if necessary;
6. Calculate damages, if any, for any individual member of the Waiting List Damages Subclass according to the rules, valuation methods and applying any defenses established by the Court;
7. Order and supervise final distribution of damages awarded to all members of the Waiting List Damages Subclass under the claims administration process; and
8. Perform such other tasks as may be determined necessary by the Special Master,

according to the rules and valuation methods and by applying any defenses established by the Court or as otherwise required by the Court.

The Claims Administrator shall:

1. Perform the actual work of receiving, distributing for review, processing, and calculating claims under the supervision of the Special Master; and
2. Perform such other tasks as may be determined necessary by the Special Master according to the rules, valuation methods and by applying any defenses established by the Court or as otherwise required by the Court.
3. Determinations made by the Claims Administrator may be appealed by any party to the Special Master. Rulings of the Special Master may be appealed by any party to the Court under the standards set forth in Haw. R. Civ. Pro. 53 and this Court's orders, unless otherwise ordered by the Court. The Court shall retain ultimate jurisdiction to resolve all matters relating to the claims administration and the Special Master processes.

B. DURING PENDENCY OF APPEAL - MEET & CONFER.

During the pendency of the appeal, all outstanding discovery regarding claimants' application and award dates shall be answered by Defendants.

By mutual agreement, the parties may meet and confer to identify and attempt to reach agreement on Waiting List Damages Subclass members who:

1. Failed to file a claim with the Hawaiian Claims Office by August 31, 1995
(Order (1) Denying Plaintiffs' Motion For Partial Summary Judgment On Financial Qualification Requirements Imposed On Beneficiaries Seeking Homestead Awards; (2) Denying Plaintiffs' Motion For Partial Summary Judgment That "Deferred Status" Imposed By DHHL Is

Not A Bar To Damages In This Case, Or Alternatively That DHHL Must Prove It Strictly Followed Its Regulations Before It Can Invoke "Deferred Status" As A Defense To Damages; (3) Granting In Part And Denying In Part Defendants' Motion For Adoption Of Specific Rules To Govern Computation Of Damage (Part 1); And (4) Granting In Part And Denying In Part Defendants' Motion for Adoption of Specific Rules to Govern Computation of Damage (Part 2), filed February 4, 2013, ¶7 (hereafter "2/4/13 Order ¶x");

2. Died before a claim was filed with the Hawaiian Claims Office (2/4/13 Order ¶13);
3. Settled a claim with the Hawaiian Claims Office (2/4/13 Order ¶11);
4. Did not submit a homestead application (2/4/13 Order ¶14);
5. Submitted a homestead application after June 30, 1988 (2/4/13 Order ¶15);
6. Submitted multiple applications for same type of homestead (2/4/13 ¶20);
7. Do not meet Native Hawaiian Qualification (2/4/13 Order ¶12);
8. Was not 18 years of age at the time of his or her application;
9. Was a prior lessee of same type of homestead (2/4/13 Order ¶18) or was a lessee at the time the applicant submitted an application for the same type of homestead (2/4/13 Order ¶19);
10. Opted out of the lawsuit;
11. Filed claims unrelated to an application for a homestead lease; or
12. Received a homestead award within the reasonable waiting period (i.e. within six (6) years of applying for a homestead lease).

The parties shall meet and confer to identify and attempt to reach agreement on Waiting List Damages Subclass members who:

- Order ¶15);
1. Submitted a homestead application on or before June 30, 1988 (2/4/13 Order ¶15);
 2. Meet Native Hawaiian Qualifications (2/4/13 Order ¶12); and
 3. Were 18 years of age at the time of application.

For Waiting List Damages Subclass members whom the parties agree meet these qualifications set forth in the immediately preceding paragraphs 1 through 3, the parties shall also meet, confer and attempt to reach agreement regarding:

4. The date, type and island of homestead application the claimant submitted to DHHL; and
5. The date of the claimant's lease award, if any.

C. AFTER APPEAL AND REMAND.

Upon remand for further proceedings in accordance with the 54(b) judgment on appeal, a Claim Form in the form attached as Exhibit "1", or as revised by the decision and final judgment on appeal, shall be sent to each member of the Waiting List Damages Subclass.

1. DISCLOSURE OF AFFIRMATIVE DEFENSES.

Defendants shall disclose all affirmative defenses for each Waiting List Damages Subclass member who submits a Claim Form, including assertions and any evidence in support of Defendants' assertion that the claimant:

- a. Declined to select a lot at lot selection (2/4/13 Order ¶2);
- b. Was deferred from a particular offering because of the claimant's financial disqualifications (2/4/13 Order ¶3);
- c. Declined offer of a homestead lease (2/4/13 Order ¶4);
- d. Did not mitigate damages (2/4/13 Order ¶6);
- e. Failed to timely file a claim with the Claims Panel on or before August 31,

1995 (2/4/13 ¶7);

f. Settled his or her claim with the Department of Hawaiian Home Lands

(2/4/13 ¶11);

g. Was not a "beneficiary" when he or she filed a claim under Haw. Rev. Stat.

ch. 674;

h. Did not apply for or attempt to apply for a Hawaiian Home Lands homestead lease, or is not or was not a "successor" as that term is defined in section 209 of the Hawaiian Homes Commission Act (hereafter "HHCA") (2/4/13 Order ¶14);

e. Applied for a homestead lease after June 30, 1988 (2/4/13/ Order ¶15);

f. Had an application that was deferred under rules, policies, or procedures adopted by the DHHL to implement the provisions of the HHCA and may only recover damages after the date that the deferral imposed by the rules was no longer applicable, including - but not limited to - deferrals imposed pursuant to the Property Ownership, Financial Resources and Income Policies and Procedures deemed valid in the *Order Granting in Part and Denying in Part Plaintiffs' Motion for Partial Summary Judgment on Liability for Ultra Vires Subclass Claims and Granting in Part and Denying in Part Defendants' Motion for Summary Judgment* [Filed July 29, 2009] (2/4/13 ¶16);

g. Was married to a lessee (2/4/13 Order ¶17);

h. Was previously a lessee of a DHHL residential lot, unless the limited exceptions of Haw. Admin. R. §10-3-23 apply (2/4/13 ¶18);

i. Was a lessee at the time he or she filed an application for the same type of homestead he or she already had (2/4/13 ¶19);

j. Filed an application after earlier applying for the same type of homestead and, therefore, is barred from obtaining damages for two different waiting periods (2/4/13 Order ¶20);

k. Did not spend any money directly out of pocket on alternative land (*Order Granting In Part And Denying In Part Plaintiffs' Second Motion To Determine What Model Should Be Used To Establish The Amount Of Damage Class Members Suffered As A Result Of The Breaches Committed By Defendants [Filed July 22, 2011]; And Granting In Part And Denying In Part Defendants' Motion For Adoption Of Specific Rules To Govern Computation Of Damages (Part 1) [Filed February 10, 2012], filed February 14, 2013, ¶1* (hereafter "2/14/13 Order ¶x");

l. Seeks damages for rental or other payments attributable to houses or other structures on the alternative land (2/14/13 Order ¶2);

m. Seeks damages in excess of fair market rental value, as determined by the Court (2/14/13 Order ¶3);

n. Seeks an increment of damages in excess of the fair market rental value of a typical or average homestead lot (2/14/13 Order ¶4); and/or

o. Was deferred during some period because the claimant did not respond to an orientation meeting letter as determined by the Court and set forth in its *Order Granting In Part And Denying In Part Plaintiffs' Motion For Summary Judgment To Compute The Amount Of Damage For Waiting List Subclass O'ahu Residential Group A* [Filed January 20, 2015].

2. CLAIMS REVIEW PROCESS - UNDISPUTED CLAIMS.

Damages for claimants for whom there is no factual dispute as to: (1) Whether they meet the Waiting List Subclass criteria (date of application, 18 years old, and Native Hawaiian

Qualification); (2) The claimant's application and award date, if any; and (3) the applicability of affirmative defenses, if any, to the claimant's claims, shall be computed by the Claims Administrator.

The parties will receive a Notice of Court Decision. The Notice of Court Decision will inform the claimant of the following:

- a. The total amount of damages arising from the claimant's claim, if any;
- b. The means by which damages were computed, including whether they were limited by any affirmative defense, including deferral periods;
- c. Their right and procedure by which to appeal the applicability of any of the recommended award, including any affirmative defenses applied or not applied; and
- d. Their right and the procedure by which to submit alternative evidence of actual out of pocket expense as alternative measure of damages.

3. CLAIM REVIEW PROCESS - DISPUTED CLAIMS.

The Claims Administrator and Special Master may receive and consider the following evidence:

- a. The Class Action Claim Forms and attached evidence;
- b. The HCO Claim Forms and other factual information contained in the HCO Claims Files, including investigative reports and any other documentary or other factual information, except Panel decisions or testimony submitted in hearing or to the Panel¹;

¹ HRS §674-11 Subsequent litigation; excluded evidence. No statement made in the course of any investigation, hearing, or review proceedings of the panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any legal proceeding. No opinion, conclusion, finding, or recommendation of the panel on the issue of liability, or on the issue of compensation, or corrective action shall be admitted into evidence

- c. DHHL application and/or award files; and
- d. All evidence submitted in support of affirmative defenses.

A proof of claim submitted by a class member may be rejected by the Claims Administrator for the following reasons:

- a. No damages are claimed;
- b. The proof of claim is not signed by the claimant or his/her representative or attorney;
- c. The claim form is not timely filed with the Claims Administrator;
- d. The claim is withdrawn by the claimant;
- e. The claim duplicates another claim by the same claimant;
- f. The claim contains a statement that the claimant does not want to participate in the matter; or
- g. The claimant does not meet the Waiting List Damages subclass criteria.

The Claims Administrator shall make recommendations on all disputed claims and submit them to the Special Master.

The Special Master shall conduct a review of disputed claims under the provisions of Section "A" of this Order and make findings and recommendations to the Court on all disputed claims.

The Court shall review the Special Master's findings and recommendations under the standards set forth in Haw. R. Civ. Pro. 53 and this Court's orders.

in any legal proceeding, nor shall any party to the panel hearing, or the counsel, or other representative of the party, refer to or comment thereon in any opening statement, any argument, or at any other time, to any court or jury.

The parties shall receive the Notice of Court Decision the Court renders for each disputed claim.

The Notice of Court Decision shall inform the claimant of the following:

- a. The total amount of recommended damages, if any;
- b. An explanation as to how damages were computed, including whether damages were limited by any affirmative defense, including deferral periods;
- c. Their right and the procedure by which to appeal the recommended award and applicability of any affirmative defense; and
- d. The right and procedure by which to submit alternative evidence of actual out of pocket expense as an alternative measure of damages.

4. CLAIMS REVIEW PROCESS – NON-WAITING CLAIMS.

For any claim that the Special Master determines is not within the Waiting List Damages Subclass (Subclass 1) claims, the Special Master, with review and approval of the Court, shall implement a separate process for the resolution of that claim. The Special Master shall review these claims, make findings of fact and a recommendation to the Court as to liability, causation and damages based on the evidence as set forth in Section F, above. The parties may present objections to the Court in response, and contest any issue before the Court. For these claims that are not Waiting List Damages Subclass claims, each party shall have full opportunity to present objections and litigate those claims before the Court to make sure there is no imposition of liability on the Defendants for a non-delay claim without full opportunity for the State to present ^{its} defense as to whether there has been a breach of trust duties by the State. All such claims shall be stayed until resolution of Waiting List Damages Subclass damages claims. The Court will

reserve ruling on Plaintiffs' request that the Defendant pay for the Special Master for claims that are not Waiting List Damages Subclass claims. ~~Partial Transcript of January 30, 2017 Hearing at 6, attached as Exhibit "2" hereto,~~ *MF*

D. AMENDED 54(b) JUDGMENT.

An amended 54(b) judgment shall be entered on each claim after the completion of the periods set by the Court for review of the returned claim by the Claims Administrator and Special Master, if any.

E. PAYMENT OF CLAIMS.

Payment of damages awarded to Claimants, if any, by the amended 54(b) judgment shall be made within a reasonable time after the actual receipt of funds appropriated by the Legislature of the State of Hawaii for such purpose.

F. POTENTIAL MODIFICATION OF PROCEDURES AFTER APPELLATE REVIEW.

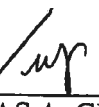
The procedure and forms adopted in this Order are based on the premise that an appeal in the instant case will not result in remand to this Court on issues of liability or the method by which damages are calculated. If such a remand occurs, the procedures set forth herein will be revised by the Court according to address such ruling(s).

DATED: Honolulu, Hawai'i, JUL 29, 2017.

MIRGINIA IEA GRANDALL
JUDGE OF THE ABOVE-ENTITLED COURT



APPROVED AS TO FORM:



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In the Circuit Court of the First Circuit, State of Hawaii; Kalima, et al., v. State of Hawaii, et al.,
Civ. No. 99-4771-12; Certificate of Service [State Defendants' Objections to Plaintiffs'
[Proposed] Order Granting Plaintiffs' Motion to Establish Claims Administration Process to
Resolve All Claims [Filed November 9, 2016]].