



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

GERARD L. CABANA,

Employee,

vs.

GUAM REVENUE AND TAXATION,

Management.

ADVERSE ACTION APPEAL
CASE NO. 09-AA42T

DECISION AND JUDGMENT

This case came before the Civil Service Commission at its regularly scheduled meeting on February 23, March 3, March 8, March 10, and March 29, 2016, at its office located at Suite 6A, Phase II, Sinajana Complex, 777 Route 4, Sinajana, GU 96910.

("Employee") was present and represented by John Terlaje, Esq.. Present for Management was the Director, Department of Revenue and Taxation, or his authorized designee, represented by Assistant Attorney General Monty R. May.

I. JURISDICTION

The jurisdiction of the Civil Service Commission is based upon the Organic Act of Guam, 4 G.C.A. §§ 4401-4411, and the Department of Administration Personnel Rules and Regulations.

II. FINDINGS OF FACT

Having heard the testimonies of Hye Kyong Pak, Jung Kang, Maurice Montgomery, John Garrido, GPD Officer Arthur Diola, and the Employee, the Commission find the following was established by clear and convincing evidence unless otherwise noted.

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3 1. On September 12, 2009 Hye Kyong Pak, then known as Hye McQuire, was the owner of
4 Cinderella's Bar, a bar in the Park Arcade, San Vitores Road, Upper Tumon.

5 2. Hye Pak had a valid on-sale liquor license to operate the bar.

6 3. On February 11, 2009 the Employee was employed by the Department of Revenue and
7 Taxation as a Compliance Inspector I.

8 4. One of the duties of a Compliance Officer 1 was and is to inspect licensed bars to determine
9 their compliance with the laws and regulations that govern the business of selling alcoholic
10 beverages to the public. They have a duty to report violations in writing to the Supervisor for
11 official action.

12 5. During the months preceding September 11, 2009 the Employee made official visits to the
13 Cinderella's Bar and there met Hye Park.

14 6. Hye Pak testified that before September 11, 2009, feeling pressure placed upon her by the
15 Employee while acting as a Compliance Inspector to pay him cash money she paid the
16 Employee \$1000 cash at his request, thinking that he would cease his solicitations. She testified
17 on September 11, 2009 he began calling her and requesting a meeting for the stated purpose of
18 getting another payment.

19 7. On February 12, 2009, between 1 and 2 a.m., the Employee, while alone and off duty,
20 entered the Cinderella's Bar and met Hye Kyong Pak.

21 8. At the meeting the Employee requested and accepted an envelope from Hye Pak containing
22 approximately \$200.

23 9. The Employee exited the bar with an envelope in his pocket. He was intercepted by the
24 officers of the Guam Police Department, who detained the Employee and found the envelope
25 in his pocket.

1 10. Under no circumstances are Compliance Inspectors authorized to accept cash payments
2 while inside the premises of a licensed bar.

3 11. On September 12, 2009 the Employee used his official position with Management as
4 leverage to induce Hye Pak to pay him money.

5 12. On October 27, 2009 Management issued a Notice of Proposed Adverse Action to the
6 Employee.

7 13. Management issued a Final Notice of Adverse Action on November 10, 2009 in which
8 Management terminated the employment of the Employee.

9 14. The Employee filed a timely appeal on November 30, 2009.

10 **III. CONCLUSIONS OF LAW**

11 15. On February 12, 2009 the Employee committed the unethical misconduct in he solicited
12 and accepted money from a licensed bar owner that he was charged by Management to inspect
13 and report.

14 16. On February 12, 2009 the Employee committed misconduct in that he solicited and
15 accepted money in violation of the rules of his employer.


16 17. On February 12, 2009 the Employee committed Official Misconduct as defined by 9 GCA
17 § 49.40 in that his solicitation and acceptance of money was an act related to his office, done
18 with intent to benefit himself, and done when he knew that the act was not authorized.

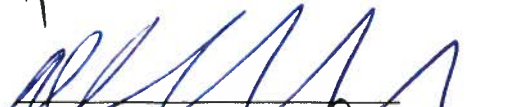
19 18. On February 12, 2009 the Employee committed Receipt of a Bribe as defined by 9 GCA §
20 49.30 in that he solicited and received money from Hye Pak, a benefit to himself, in
21 consideration of the performance of his official functions.

22 **IV. DECISION**

23 By a vote of 5 to 0, the Commission sustains and upholds the action of Management to
24 terminate the employment of Employee, effective November 11, 2009.


1 SO ADJUDGED THIS 20th DAY OF April 2016.


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3 **EDITH PANGELINAN**
4 **Chairperson**


5 **DANIEL B. LEON GUERRERO**
6 **Vice-Chairperson**

7 
8 **PRISCILLA T. TUNCAP**
9 **Commissioner**

10 
11 **JOHN SMITH**
12 **Commissioner**

13 
14 **LOU HONGYEE**
15 **Commissioner**

16 
17 **CATHERINE GAYLE**
18 **Commissioner**