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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

OCT 15 2010

TIME: 4:43 PM BY: JCY
FILE NO. OPA-PA: 10-004

**BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEAL**

IN THE MATTER OF THE APPEAL OF) APPEAL NO.: OPA-PA-010-004
)
)
)
) **APPELLANT'S REPLY TO OPPOSITION**
) **TO MOTION TO CONTINUE HEARING**
) **DATE AND MOTION FOR DISCOVERY**

HARBOR CENTER GUAM CO. LTD.,)
And HARBOUR CENTRE PORT)
TERMINAL, INC.)
)
)
)
_____)

COMES NOW, Harbor Center Guam, by and through its attorneys, Cabot Mantanona LLP, respectfully submits this reply to Appellee's Opposition to Appellant's Motion to Continue Hearing Date and Motion for Discovery.

Respectfully submitted this 15 day of October, 2010.

CABOT MANTANONA LLP
Attorneys for Harbor Center Guam

By: _____

SARAH STROCK

MEMORANDUM OF POINTS AND AUTHORITIES

1. Continuance of Hearing Date

Appellant's due process rights will be denied unless a continuance is granted. Appellant stated several reasons to continue the October 18, 2010 court hearing and all of those reasons justify a continuance.

First, Appellant is deprived of procedural due process rights to have a fair and impartial hearing because the Hearings Officer won't accommodate Appellant's key witness, Claudia Acfalle. Claudia Acfalle, has been off island on emergency leave and unable to return before the October 18, 2010 hearing date. Appellant's law firm has made several attempts to contact Claudia Acfalle, but has been unsuccessful obtaining her return date, location, or telephone number where she can be reached. Cabot Mantanona LLP sent emails to Claudia Acfalle on October 4, 11, and 14, 2010. The last correspondence from Claudia Acfalle was October 2, 2010, just a few days after the Pretrial Conference. See email correspondence Exhibit "A" "B" and "C."

Appellant's appeal depends on the testimony of Claudia Acfalle. 2 G.A.R. § 1209 compels the Hearing Officer to receive written, oral, or otherwise presented testimony, and allows the hearings officer to compel testimony of witnesses. So far the Hearings Officer has issued a subpoena for Claudia Acfalle, but Appellant is unable to serve the subpoena because Appellant's counsel has not been able to ascertain her location or obtain a phone number. Therefore, Appellant has exhausted this option before the October 18, 2010 hearing date. Unless a continuance is granted, Appellant is unable to produce its key witness at the Hearing, and Appellant is deprived of a fair and impartial hearing.

Second, Appellant is deprived of procedural due process rights to have a fair and impartial hearing because the Hearings Officer won't accommodate Appellant's counsel. At the September 30, 2010 Prehearing Conference, Appellant's counsel, Rawlen Mantanona, requested a continuance because Appellant's counsel on this case would be unavailable for the October 18, 2010 Hearing date. Appellant's lead counsel, David Ledger was scheduled to be in trial at District Court with Co-counsel Helkei Hemminger. Rawlen Mantanona was scheduled to start a jury trial on October 28, 2010 in Superior Court and he needed time to prepare for trial. The other two remaining attorneys at Appellant's counsel's law firm included Sarah Strock, who had no prior involvement in this case and was scheduled to co-counsel the October 28, 2010 jury trial, and Cesar Cabot, who is only at the office part-time, while he is recovering from a recent spinal surgery. Unless a continuance is granted, Appellant's counsel is unable to adequately prepare for the hearing and Appellant is deprived of a fair and impartial hearing.

2. Request for Depositions

Appellant is also deprived of procedural due process rights to have a fair and impartial hearing because the Hearings Officer won't accommodate Appellant's requests for discovery. This is a complicated procurement case with at least twelve lay witnesses, a missing key witness, a witness in the hospital, documentation from three Freedom of Information Act Requests, and a complicated three hundred million dollar Port Management Contract. Appellant requested time to conduct discovery on the evaluation committee members, and depositions of all of the witnesses prior to the Hearing. On Friday, October 15, 2010 the Port Authority's Counsel informed Appellant that the

requested documents under Appellant's 3rd Freedom of Information Act request (requesting information on the evaluation committee members) would not be produced as required before the Monday, October 18, 2010 Hearing date, and that the Port Authority would seek a ten day extension from Friday October 15, 2010, the original due date. Appellant Harbor Center Guam requests that the Hearings Officer order discovery in this appeal pursuant to 2 G.A.R. Div. 4. § 12109(i), 2 G.A.R. Div. 4. § 12104(c)(7), and 5 G.C.A. § 9218. Depositions are necessary in this appeal due to the complex nature of this particular contract. Unless a continuance is granted, Appellant's counsel is unable to adequately prepare for the hearing and Appellant is deprived of a fair and impartial hearing.

Therefore, in order to not deprive Appellant of due process rights, Appellant requests that the Hearings Officer grant the requested continuance, and compel the attendance and testimony (whether it be telephonic or in person) by all twelve material witnesses, for both depositions and the new hearing date.

Respectfully submitted this 15 day of October, 2010.

CABOT MANTANONA LLP
Attorneys for Harbor Center Guam

By: _____

SARAH STROCK

Sarah Strock

From: Sarah Strock [ss@cmlaw.us]
Sent: Wednesday, October 06, 2010 3:15 PM
To: Sarah Strock
Subject: Fw: Return to Guam

----- Original Message -----

From: Rawlen Mantanona
To: 'David Ledger' ; cc@cmlaw.us ; 'Sarah A. Strock'
Sent: Monday, October 04, 2010 4:31 PM
Subject: FW: Return to Guam

From: Rawlen Mantanona [mailto:rm@cmlaw.us]
Sent: Monday, October 04, 2010 4:30 PM
To: 'Claudia Acfalle'
Subject: RE: Return to Guam

Claudia

We have to show our due diligence in producing our witnesses for this appeal. Can you please at least state your location and address, (the phone number to the Gas station would also be helpful) to show the Public Auditor and her hearing officer that this is legitimate and you are not avoiding as I have no other means to contact you than email.

From: Claudia Acfalle [mailto:claudia.acfalle@gsa.guam.gov]
Sent: Saturday, October 02, 2010 4:50 AM
To: Rawlen Mantanona
Subject: Re: Return to Guam

At this time, I do not have a telephone number to give you. The cell phone I have does not have service where my daughter lives. As I mentioned to you earlier I do not know when I will be returning at this time. All I can do is try to get to a phone and call you. I normally go to the nearest gas station down the street to use the phone. Sorry!

Claudia

On Fri, Oct 1, 2010 at 9:49 AM, Rawlen Mantanona <rm@cmlaw.us> wrote:

Claudia,

I understand that you are on a family emergency. I understand if you do not have a definite return date but the parties want you to testify at the hearing. I would prefer your live testimony but if forced to the testimony will be telephonic. Telephonic testimony doesn't have the same effect on those listening to the testimony, as live testimony. Can you please advise generally when you think you may be returning. Secondly, can you disclose your location and contact telephone number. I would like to talk with you in regards to your testimony, as soon as possible, as trial is in two weeks.

Best Regards

Rawlen

From: Claudia Acfalle [mailto:claudia.acfalle@gsa.guam.gov]
Sent: Friday, October 01, 2010 3:38 AM
To: Rawlen Mantanona
Subject: Re: Return to Guam

Hi Rawlen:

I am not sure of my return date at this time.

Claudia

On Thu, Sep 30, 2010 at 11:43 AM, Rawlen Mantanona <rm@cmlaw.us> wrote:

Dear Claudia,

I have not received a response in regards to my inquiry as to your return. Please respond or notify me as to your return. I tried to get a continuance of the trial but Anthony Camacho set the trial date for October 15, 2010. I need to know your availability.

Best Regards

Rawlen

Sarah Strock

From: Rawlen Mantanona [rm@cmlaw.us]
Sent: Monday, October 11, 2010 3:27 PM
To: 'Claudia Acfalle'
Cc: 'Sarah Strock'
Subject: Return PAG appeal

Dear Claudia,

I'm following up again as to your return, if you have any return date as trial is set for October 18, 2010. Please let me know your current address and location. Please give me phone number I can get a hold of you.

RAWLEN MANTANONA

Sarah Strock

From: Sarah Strock [ss@cmlaw.us]
Sent: Thursday, October 14, 2010 10:54 AM
To: 'Claudia Acfalle'
Cc: 'Rawlen Mantanona'; 'dl@cmlaw.us'
Subject: RE: Return PAG appeal

Hafa adai Claudia,

I am helping Rawlen Mantanona with the Port Management Contract case and we really need to reach you. Rawlen sent you emails on October 4, 2010 and October 11, 2010 and we still haven't received a response. Today is Thursday, October 14 and the hearing date is Monday, October 18, 2010 at 9:00 AM. We need you to contact us before October 18, 2010 and answer the following questions:

1. Where are you? Please give us a physical address so we can serve you with a subpoena.
2. When are you coming back? If you can't provide an exact date, please estimate. We filed a motion to continue the hearing date because you are our key witness but we need a date to continue the hearing to.
3. How can we reach you? You mentioned that there is a gas station down the street where you can use the phone. In Rawlen's October 4 email he asked you to provide the name, location, and phone number of that gas station so we can have some way to reach you.

I am sorry to be so curt, but we haven't heard from you since October 2, 2010, we don't know where you are, when you're coming back and we need your testimony.

Thank you,

Sarah Strock, Esq.
Attorney at law
Cabot Mantanona LLP
Edge Building, 2nd Floor
929 South Marine Corps Drive
Tamuning, GU 96913
Phone: (671)646-2001
Fax: (671) 646-0777
www.cmlaw.us

From: Rawlen Mantanona [mailto:rm@cmlaw.us]
Sent: Monday, October 11, 2010 3:27 PM
To: 'Claudia Acfalle'
Cc: 'Sarah Strock'
Subject: Return PAG appeal

Dear Claudia,

I'm following up again as to your return, if you have any return date as trial is set for October 18, 2010. Please let me know your current address and location. Please give me phone number I can get a hold of you.

RAWLEN MANTANONA