

NO. 29837

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

APRIL H. BUCHWACH,
Plaintiff-Appellant,

v.

GATE GOURMET INC.; STATE OF HAWAII,
Defendants-Appellees

and

JOHN DOES 1-10; JANE DOES 1-10;
DOE ENTITIES 1-10; DOE CORPORATIONS 1-10;
DOE LIMITED LIABILITY COMPANIES 1-10;
and DOE GOVERNMENTAL AGENCIES 1-10, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIVIL NO. 07-1-0126)

ORDER

(By: Watanabe, Presiding Judge, Foley and Fujise, JJ.)

Upon consideration of Defendant-Appellee State of Hawaii's Second Motion to Dismiss Plaintiff-Appellant April H. Buchwach's Appeal From Judgment Entered in Favor of Defendant-Appellee State of Hawaii on April 30, 2009, the papers in support, and the records and files herein, it appears that:

(1) on May 19, 2009, Plaintiff-Appellant April H. Buchwach (Appellant) filed a notice of appeal; (2) on August 28, 2009, the State filed a motion to dismiss Appellant's appeal because Appellant failed to comply with the appellate rules; (3) on September 25, 2009, this court denied the motion and directed Appellant to file certain documents, including the jurisdictional statement; (4) the court also ordered Appellant's attorney Greg Nishioka, Esq. (Mr. Nishioka), to show cause as to why he failed

to comply with the appellate rules and that failure to respond to the order may result in sanctions; (5) Appellant did not comply with the September 25, 2009 order; (6) Mr. Nishioka did not comply with the September 25, 2009 order; (7) when Appellant failed to file the opening brief, which was due on September 30, 2009, the appellate clerk notified Appellant that: (a) the statement of jurisdiction and opening brief were in default; (b) the matter would be brought to the attention of the court on October 30, 2009 for such action as the court deems proper; and (c) the appeal may be dismissed; (8) on October 26, 2009, the State filed its second motion to dismiss the appeal due to Appellant's failure to comply with the appellate rules; and (9) Appellant did not seek relief from default or respond to the State's motion to dismiss the appeal. Therefore,

IT IS HEREBY ORDERED that the second motion to dismiss appeal is granted, and this appeal is dismissed.

IT IS FURTHER ORDERED that:

1. Pursuant to HRAP Rule 51, **Greg Nishioka, Esq.** (**#4004**) is sanctioned in the amount of \$50.00.
2. A check in the said amount, payable to the State Director of Finance, along with a copy of this order, shall be deposited with the Supreme Court Clerk's Office within 10 days from the date of this order.
3. Mr. Nishioka shall also file a declaration attesting to the payment with the clerk of the appellate court within ten (10) days after entry of this order.

4. Failure to comply with this order will result in additional sanctions and a referral to the Office of the Disciplinary Counsel.

DATED: Honolulu, Hawai'i, November 13, 2009.

Presiding Judge

Associate Judge

Associate Judge