

STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Aquatic Resources
Honolulu, Hawai'i 96813

May 14, 2021

Board of Land and Natural Resources
State of Hawai'i
Honolulu, Hawai'i

APPROVAL OF PETITION FOR CONTESTED CASE HEARING BY JASON BEEVERS
REGARDING ENFORCEMENT ACTION AGAINST JASON BEEVERS FOR UNLAWFUL
COLLECTION OF AQUATIC LIFE FOR AQUARIUM PURPOSES WITHIN THE WEST
HAWAI'I REGIONAL FISHERY MANAGEMENT AREA, ISLAND OF HAWAI'I

SUMMARY

Petitioner Jason Beevers (“Beevers”) requested a Contested Case Hearing (“CCH”) challenging the enforcement action against Jason Beevers for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawai'i Regional Fishery Management Area, Island of Hawai'i, which was scheduled to be considered by the Board of Land and Natural Resources (“Board”) at its February 26, 2021 Board Meeting. We find that Beevers is entitled to a CCH and recommend that the Board grant the petition.

BACKGROUND

On or about August 27, 2020, an Officer from the Department of Land and Natural Resources (“DLNR”) Division of Conservation and Resources Enforcement (“DOCARE”) while on patrol observed Vessel HA 9218H at rest within the West Hawai'i Regional Fishery Management Area (“WHRFMA”). The Officer subsequently intercepted Vessel HA 9218H at the Kaulana Boat Ramp and upon further investigation discovered the vessel belonged to Jason Beevers (“Beevers”). The Officer contacted DLNR Division of Aquatic Resources (“DAR”) to assist in the investigation. During the investigation of Vessel HA 9218H, the Officer observed live aquatic life on board along with aquarium gear and without proper permits. These observations indicate violations of Hawaii Administrative Rules (“HAR”) §§ 13-60.4-4, 13-60.4-6, and 13-60.4-7.

An enforcement action against Beevers was placed on the agenda for the February 26, 2021, meeting of the Board of Land and Natural Resources (“Board”). At this meeting, DAR sought a fine of \$69,800 against Beevers for the alleged unlawful collection of aquatic life for aquarium purposes within the WHRFMA. Prior to the matter being heard, Board Chair Suzanne Case acknowledged that DLNR had received a written request for a contested case hearing from Beevers on February 25, 2021. See **Exhibit 1**. As a result, there was no discussion on this case at this meeting.

DISCUSSION

A contested case hearing is required if the statute or rule governing the activity in question mandates a hearing prior to the administrative agency's decision-making, or if a hearing is mandated by due process. *Bush v. Hawaiian Homes Com'n*, 76 Hawai'i 128, 134, 870 P.2d 1272, 1278 (1994). Thus, a particular petitioner is entitled to a contested case hearing if so stated in a statute or rule or if the petitioner has a property interest entitled to due process protection. In order to obtain a contested case hearing, a petitioner must also follow specific procedures for making the request, etcetera, in order to be entitled to a contested case hearing. *Hui Kako 'o Aina Ho 'opulapula v. Bd of Land & Nat. Res.*, 112 Hawai'i 28, 39–41, 143 P.3d 1230, 1241–43 (2006). Those procedures are contained in HAR § 13-1-29.

A. Statutes and Rules Do Not Require a Hearing

The statutes and rules in this case do not require a contested case hearing to be held. Beevers was cited for violations of HAR §§ 13-60.4-4, 13-60.4-6, and 13-60.4-7. Authorization to assess fines against Beevers for these violations is contained in HRS § 187-12.5. See HAR § 13-60.4-8. Neither the rules nor the statute require the Board to hold a contested case hearing in connection with the violations penalized under HRS § 187-12.5, and Beevers has not cited to a statute or rule which requires the Board to hold a hearing.

B. Due Process Requires a Hearing

A petitioner must possess an interest which rises to the level of "property" in order to assert a right to procedural due process. *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972); *accord Sandy Beach Defense Fund v. City Council of City & Cnty. of Honolulu*, 70 Hawai'i 361, 377, 773 P.2d 250, 260 (1989).

At the outset, a claim of a due process right to a hearing requires a two[-] step analysis: (1) is the particular interest which the claimant seeks to protect by a hearing "property" within the meaning of the due process clauses of the federal and state constitutions, and (2) if the interest is "property" what specific procedures are required to protect it.

Brown v. Thompson, 91 Hawai'i 1, 10, 979 P.2d 586, 595 (1999) (citations omitted).

Courts have held that parties have a property interest in their money. *Zilba v. City of Port Clinton*, 924 F. Supp. 2d 867, 877 (N.D. Ohio Feb. 15, 2013) ("No doubt, Plaintiff has a property interest in his money." (citing other sources)). Beevers is subject to a monetary fine if found liable by the Board. Beevers' potential liability creates a sufficient property interest to trigger due process.

C. Beevers Has Substantially Complied with Procedural Requirements

The Hawaii Administrative Rules require that a person requesting a contested case hearing by the Board must make an oral or written request for a contested case hearing by the close of the Board

meeting at which the subject matter of the request is scheduled for Board disposition. HAR § 13-1-29(a). The initial request must be followed by the filing of a written petition no later than ten calendar days after the close of the Board meeting at which the matter was scheduled for disposition. *Id.* For good cause, the time for making the oral or written request or submitting a written petition, or both, may be waived. *Id.*

Beevers properly followed the requirements contained in HAR § 13-1-29 in timely requesting a contested case hearing in writing prior to the close of the February 26, 2021 Board meeting at which the enforcement action against him was scheduled to be heard.

CONCLUSION

The Board is required to provide a contested case hearing to petitioner Jason Beevers.

RECOMMENDATIONS:

1. That the Board approve the Petition for Contested Case Hearing by Jason Beevers; and
2. That the Board authorize the Chairperson to appoint a hearing officer to preside over the hearing.

Respectfully submitted,



Brian J. Neilson
Division of Aquatic Resources

APPROVED FOR SUBMITTAL:



Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachment

Exhibit 1 – Petition for Contested Case Hearing

Item F-3 Exhibit 1

RECEIVED



STATE OF HAWAII
BOARD OF LAND AND NATURAL RESOURCES

2021 FEB 25 AM 9:14

PETITION FOR A CONTESTED CASE HEARING

DEPT. OF LAND
& NATURAL RESOURCES
STATE OF HAWAII

OFFICIAL USE ONLY	
Case No.	Date Received
Board Action Date / Item No.	Division/Office

INSTRUCTIONS:

- File (deliver, mail or fax) this form within ten (10) days of the Board Action Date to:
 Department of Land and Natural Resources
 Administrative Proceedings Office
 1151 Punchbowl Street, Room 130
 Honolulu, Hawaii 96813
 Phone: (808) 587-1496, Fax: (808) 587-0390
- DLNR's contested case hearing rules are listed under Chapter 13-1, HAR, and can be obtained from the DLNR Administrative Proceedings Office or at its website (<http://dlnr.hawaii.gov/forms/contested-case-form/>). Please review these rules before filing a petition.
- If you use the electronic version of this form, note that the boxes are expandable to fit in your statements. If you use the hardcopy form and need more space, you may attach additional sheets.
- Pursuant to §13-1-30, HAR, a petition that involves a Conservation District Use Permit must be accompanied with a \$100.00 non-refundable filing fee (payable to "DLNR") or a request for waiver of this fee. A waiver may be granted by the Chairperson based on a petitioner's financial hardship.
- All materials, including this form, shall be submitted in **three (3)** photocopies.

A. PETITIONER		
(If there are multiple petitioners, use one form for each.)		
1. Name Jason Beevers	2. Contact Person	
3. Address 94-1914 Wakea Ave	4. City Naalehu	5. State and ZIP Hawaii 96772
6. Email chimeara_1@hotmail.com	7. Phone 832-347-5959	8. Fax

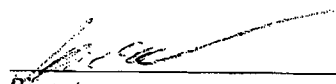
B. ATTORNEY (if represented)		
9. Attorney Name	10. Firm Name	
11. Address	12. City	13. State and ZIP
14. Email	15. Phone	16. Fax

C. SUBJECT MATTER	
17. Board Action Being Contested Enforcement Action against Jason Beevers for Unlawful Collection of Aquatic Life for Aquarium Purposes within the West Hawaii Regional Fishery Management Area, Island of Hawai'i.	
18. Board Action Date 2/26/2021	19. Item No. Agenda Item F-2
20. Any Specific Statute or Rule That Entitles Petitioner to a Contested Case	
21. Any Specific Property Interest of Petitioner That Is Entitled to Due Process Protection	
22. Any Disagreement Petitioner May Have with an Application before the Board	
23. Any Relief Petitioner Seeks or Deems Itself Entitled to	
24. How Petitioner's Participation in the Proceeding Would Serve the Public Interest	
25. Any Other Information That May Assist the Board in Determining Whether Petitioner Meets the Criteria to Be a Party under Section 13-1-31, HAR I am unable to discuss this case until after my trial.	

Check this box if Petitioner is submitting supporting documents with this form.

Check this box if Petitioner will submit additional supporting documents after filing this form.

Jason Beevers
Petitioner or Representative (Print Name)


Signature

2/24/2021
Date