



FEDERAL ELECTION COMMISSION  
WASHINGTON, D C 20463

MAR 14 2006

Kyle Dong  
Incentive Design Builders, Inc.  
91-188 Kalaeloa Blvd  
Kapolei, HI 96707

RE: MUR 5571

Dear Mr. Dong:

On March 7, 2006, the Federal Election Commission found that there is reason to believe that Incentive Design Builders, Inc. ("IDB") and you, as a corporate officer, violated 2 U.S.C. § 441b(a), a provision of the Federal Election Campaign Act of 1971, as amended ("the Act"). This finding was based on information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities. *See* 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. *See* 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you and IDB intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

  
Michael E. Toner  
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

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1 **FEDERAL ELECTION COMMISSION**  
2 **FACTUAL AND LEGAL ANALYSIS**

3  
4 MUR 5571

5  
6 RESPONDENTS: Incentive Design Builders, Inc. and Kyle Dong

7  
8 **I. INTRODUCTION**

9 This matter was generated based on information ascertained by the Federal Election  
10 Commission ("the Commission") in the normal course of carrying out its supervisory  
11 responsibilities. *See* 2 U.S.C. § 437g(a)(2).

12 This matter relates to three loans that Dalton Tanonaka made to his 2004 congressional  
13 campaign, Tanonaka for Congress ("TFC"). Tanonaka made two loans totaling \$69,000 to TFC  
14 in the summer of 2004. Tanonaka made a third loan, of \$11,000, to TFC in October 2004.  
15 Federal prosecutors in Hawaii investigated the October 2004 loan, concluding that the loan came  
16 not from Tanonaka's personal funds but instead from a \$25,000 loan he had obtained from a  
17 family member. Tanonaka pled guilty to a misdemeanor of accepting a federal contribution that  
18 exceeded the \$2,000 limit.<sup>1</sup> Ken Kobayashi, *Tanonaka Admits Breaking the Law*, HONOLULU  
19 ADVERTISER, July 22, 2005 (hereinafter July 22, 2005 HONOLULU ADVERTISER article).

<sup>1</sup> Tanonaka also pled guilty to three felony charges related to his disguising the true sources of loans he reported making from personal funds to his 2002 campaign for Lieutenant Governor of Hawaii, and an additional misdemeanor charge of failing to disclose on his U. S. House of Representatives Financial Disclosure Statement a consulting position with the Koa Companies. Ken Kobayashi, *Tanonaka Admits Breaking the Law*, HONOLULU ADVERTISER, July 22, 2005. The Koa Companies, as discussed *infra* p. 3, are apparently the source of the funds Tanonaka used to make the \$65,000 in loans that the complaint here alleges were illegal. Tanonaka committed federal crimes connected to the loans for his unsuccessful 2002 state campaign when, having already concealed the true sources of those funds from state authorities, he hid his personal obligation to repay the true sources when he applied for bank loans for personal purposes the following year. Curtis Lum, *Tanonaka Sentenced to 3 Months in Prison*, HONOLULU ADVERTISER, Nov. 4, 2005. Hawaii's Campaign Spending Commission fined Tanonaka \$7,500 for failing to report as contributions the 2002 funds he used to make loans to his state campaign committee. *Tanonaka Assessed a \$7,500 Penalty*, HONOLULU ADVERTISER, Nov. 11, 2005.

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1    **II.    FACTUAL AND LEGAL ANALYSIS**

2            **A.    Background**

3            In June 2004, Dalton Tanonaka, a former newspaper reporter and television anchor for  
4    CNN International and CNBC Asia, announced that he was running for Congress in Hawaii's 1<sup>st</sup>  
5    Congressional District. Two years prior, Tanonaka had run unsuccessfully for Lieutenant  
6    Governor of Hawaii. *Republican Tanonaka Seeks to Challenge Abercrombie*, HONOLULU  
7    ADVERTISER, June 3, 2004.

8            On July 21, 2004, Tanonaka loaned \$4,000 to his campaign, and on August 28, 2004, he  
9    loaned an additional \$65,000 to the campaign. Both loans were reported as coming from the  
10   candidate's personal funds.<sup>2</sup> See 2004 Pre-primary Report (7/1/04 – 8/29/04). It appears that  
11   Tanonaka did not have sufficient personal income or assets to make these two loans. The United  
12   States House of Representatives Financial Disclosure Statement ("Financial Disclosure  
13   Statement") that Tanonaka filed on July 19, 2004 appears to substantiate this. The Financial  
14   Disclosure Statement, which covers the period January 1, 2003, through July 19, 2004, lists a  
15   salary of \$4,762.22, identifies no unearned income over \$200 or reportable assets worth more  
16   than \$1,000, and reports significant personal debts.

17           The \$4,000 Tanonaka used to make the July 21, 2004 loan is supposed to have come  
18   from personal gifts he received for his birthday, which fell on June 13. The \$65,000 loan on  
19   August 28, 2004 appears to come out of a \$70,000 lump-sum payment Tanonaka received from a  
20   longstanding consulting contract. This consulting position was with four timber harvesting and

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<sup>2</sup>        The Commission's regulations define "personal funds" to include salary and other earned income from bona fide employment and gifts of a personal nature that had been customarily received prior to candidacy. 11 C.F.R. § 110.33. A candidate may make unlimited loans to his campaign from personal funds. 11 C.F.R. § 110.10.

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1 development companies (collectively, "the Koa Companies") operated by Kyle Dong.<sup>3</sup> *See also*  
2 Kristen Sawada and Prabha Natarajan, *Creditors Hammer Hilo Mill*, PACIFIC BUSINESS NEWS,  
3 Aug. 24, 2001; Diana Leone, *2 Firms Fined \$149,000 for Illegal Big Isle Logging*,  
4 STARBULLETIN.COM, Jan. 10, 2004. According to the consulting agreement, dated April 25,  
5 2003, in return for assistance in selling and marketing their Hawaiian timber product to various  
6 individuals and entities around the world, the Koa Companies agreed to pay Tanonaka \$10,000  
7 monthly for the entire term of the five-year agreement as well as a 5% commission on annual  
8 sales exceeding \$5 million. Apparently, the Koa Companies were experiencing financial trouble  
9 during the relevant time period and were unable to pay Tanonaka according to the terms of the  
10 consulting contract.<sup>4</sup> In total, Tanonaka received only three payments from the Koa Companies  
11 and Dong: a \$3,000 check from Incentive Design Builders, Inc. ("IDB") dated June 8, 2004; the  
12 \$70,000 check from IDB dated August 27, 2004; and a \$10,000 check from Dong, dated  
13 November 23, 2004.

14 **B. Legal Analysis**

15 The \$70,000 payment from IDB to Tanonaka may have been a prohibited corporate  
16 contribution rather than a *bona fide* payment of compensation under the consulting agreement.<sup>5</sup>

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<sup>3</sup> According to the consulting agreement, the Koa Companies include Hawaii Forest Preservation LLC (a Hawaii limited liability company), and three Hawaii for profit corporations: KOA Timbers, Inc.; Incentive Design Builders, Inc.; and K&K Investments. Dong is the registered agent for all of these companies.

<sup>4</sup> Much of the information relating to Tanonaka's consulting agreement with the Koa Companies referenced herein was derived from his criminal plea agreement with the Justice Department.

<sup>5</sup> The Federal Election Campaign Act of 1971, as amended ("the Act") prohibits a corporation from making any contribution in connection with a Federal election and prohibits any officer or director from consenting to such a contribution. 2 U.S.C. § 441b(a). Commission regulations recognize that an individual may pursue gainful employment while a candidate for federal office. 11 C.F.R. § 100.33(b)(1) (earned income from *bona fide* employment included in "personal funds" of a candidate). *See also* 11 C.F.R. § 113.1(g)(6)(iii) (third party payments for candidate's personal expenses during the campaign is a contribution unless, e.g., it is employment compensation exclusively in consideration of services provided as part of this employment; and the compensation  
(footnote continued on next page)

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1 Tanonaka received the \$70,000 in a lump sum, which was contrary to the terms of the consulting  
2 agreement, and at a time when his campaign committee's financial position was poor. Within an  
3 hour of Tanonaka's depositing the check from IDB into his personal account, TFC deposited a  
4 \$65,000 check from Tanonaka into its account, which prior to that deposit had a balance of  
5 \$1,955.46. Additionally, Tanonaka's failure to disclose either his position as a consultant with  
6 the Koa Companies or the \$3,000 income from IDB on his Financial Disclosure Statement  
7 indicates a desire to conceal that relationship.<sup>6</sup> In fact, Tanonaka did not acknowledge a business  
8 relationship with Dong and the Koa Companies until after state and federal agencies initiated  
9 investigations into his campaign activities.<sup>7</sup> See Nelson Daranciang, *Tanonaka to Serve 3*  
10 *Months in Prison*, STARBULLETIN.COM, Nov. 4, 2005; *Willful Misconduct Caused Legal Plunge*,  
11 STAR-BULLETIN, Nov. 7, 2005. If the payment from IDB was not *bona fide* compensation and  
12 TFC had accurately reported it as a contribution, then the relationship, as well as the prohibited  
13 contribution, would have been revealed. Further, Tanonaka's pattern of willfully concealing the  
14 true sources of other loans allegedly made from personal funds to both TFC and his 2002 state  
15 campaign raises questions as to whether the payment from IDB is another instance of the same  
16 conduct.

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does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time).

<sup>6</sup> The late August \$70,000 payment to Tanonaka was made after the coverage period for the Financial Disclosure Statement, which ended July 19, 2004. Accordingly, the plea agreement covered only Tanonaka's failure to disclose the earlier \$3,000 payment.

<sup>7</sup> According to press reports, shortly after entering the consulting contract with the Koa Companies in 2003, Tanonaka contacted Hawaii's Governor on behalf of Koa Timber, Inc. regarding the company's application for permission to harvest koa trees on the island of Hawaii. In an e-mail to the Governor regarding the matter Tanonaka claimed to have no financial interest in the venture. Curtis Lum, *Tanonaka Sentenced to 3 Months in Prison*, HONOLULU ADVERTISER, Nov. 4, 2005; Our Opinion, *Willful Misconduct Caused Legal Plunge*, THE HONOLULU STAR-BULLETIN, Nov. 7, 2005.

1 On the other hand, the Department of Justice did not obtain a plea from Tanonaka on any  
2 FECA violation related to the \$70,000 payment. In addition, the plea agreement states as fact  
3 that Tanonaka was not paid according to the terms of the consulting contract simply because  
4 Dong was having financial difficulties.

5 Ultimately, whether there was any violation of the Act associated with the \$70,000  
6 payment will depend upon whether the consulting agreement between Tanonaka and the Koa  
7 Companies was in fact *bona fide*; whether Tanonaka actually performed the work for which he  
8 was paid; and whether the pay he received was commensurate with the amount of money that  
9 would be paid to any similarly qualified person for the same work over the same period of time.  
10 11 C.F.R. § 113.1(g)(6). However, based on the timing of IDB's payment to Tanonaka,  
11 Tanonaka's concealment of his relationship with the Koa Companies, and his pattern of hiding  
12 the sources of funds used to make loans to his campaigns, the Commission may draw a  
13 reasonable inference that the \$70,000 payment to Tanonaka in August 2004 may not have been  
14 *bona fide* compensation for consulting work but instead a prohibited corporate contribution.

15 Therefore, there is reason to believe that Incentive Design Builders, Inc. and Kyle Dong,  
16 as a corporate officer consenting to the contribution, violated 2 U.S.C. § 441b(a).