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**IN THE SUPERIOR COURT**  
**FOR THE**  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ISLAND LEISURE CORPORATION )  
d.b.a. TINIAN HOTEL, )  
Plaintiff, )  
v. )  
OSCAR C. RASA and TINIAN CASINO )  
GAMING CONTROL COMMISSION, )  
Defendants. )

Civil Action No. 99-0135  
**FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**

**I. PROCEDURAL BACKGROUND**

This matter came before the court for a bench trial on January 25, 2001, at 9:00 a.m. on Tinian. Linn Asper, Esq., appeared on behalf of the Plaintiff, Island Leisure Corporation, d.b.a. Tinian Hotel. Elliott A. Sattler, Esq., appeared on behalf of Defendant Tinian Casino Gaming Control Commission. Defendant Oscar C. Rasa, given that an Entry of Default has been entered against him, did not appear. The court, having heard and considered the arguments of counsel, and having considered the evidence and testimony presented at trial, now renders its decision.

**II. FINDINGS OF FACT**

The court, after considering the testimony and evidence presented at trial, makes the following findings of fact:

**FOR PUBLICATION**

1 1. Island Leisure Corporation d.b.a. Tinian Hotel (Plaintiff/Tinian Hotel), is and was at all times  
2 relevant to the underlying action, a corporation duly organized and existing under the laws of the  
3 Commonwealth of the Northern Mariana Islands.

4  
5 2. Oscar C. Rasa, (Defendant Rasa), is and was at all times relevant to the underlying action, a  
6 resident of Tinian in the Commonwealth of the Northern Mariana Islands.

7  
8 3. The Tinian Casino Gaming Control Commission (Defendant TCGCC), is and was all times  
9 relevant to the underlying action, a government regulating agency of the Commonwealth of the Northern  
10 Mariana Islands.

11  
12 4. On October 22, 1996, Defendant Rasa and Defendant TCGCC entered into a contract  
13 labeled "Consulting Agreement" whereby Defendant TCGCC agreed to pay Defendant Rasa "a housing  
14 allowance of \$2,400 for each three months of consulting service." *See* Def.'s Ex. A (Consulting  
15 Agreement) at 2. *See also* Pl.'s Ex. 1 (Consulting Agreement) at 2.

16  
17 5. On April 27, 1998, Defendant Rasa went to the Tinian Hotel and requested accommodation.  
18 Defendant Rasa was accompanied by Commissioner Joaquin H. Borja (Commissioner Borja), a  
19 member of Defendant TCGCC, who assured the staff at the Tinian Hotel that Defendant Rasa was  
20 employed by Defendant TCGCC. The staff at the Tinian Hotel were aware that Commissioner Borja  
21 was a member of Defendant TCGCC.

22  
23 6. Defendant Rasa stayed at the Tinian Hotel from April 27, 1998, to August 6, 1998. During  
24 this time period, Defendant Rasa accumulated hotel bills in the amount of \$5,200. *See* Pl.'s Ex. 1  
25 (Statement of Account) at 1.

26  
27 7. On June 23, 1998, Defendant Rasa issued a letter addressed to Commissioner Jose P. San  
28 Nicholas requesting the release of a housing allowance payment in the amount of \$9,600. *See* Def.'s

1 Ex. B.

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3 8. On June 24, 1998, Commissioners Jose P. San Nicolas, Borja, and Jeffrey M. Hofscheider  
4 issued a letter authorizing the release of \$9,600 to Defendant Rasa for the purpose of fulfilling past  
5 housing payment obligations.

6

7 9. On August 18, 1998, Defendant Rasa sent a letter to Defendant TCGCC wherein Defendant  
8 Rasa "[authorised] the Commission to pay the Tinian Hotel the amount \$5,200 . . ." *See* Def's Ex. E.  
9 Defendant Rasa further noted that "[p]ayment of the above should enable me to retrieve all my personal  
10 belongings from the hotel." *Id.* Defendant TCGCC did not take any action in response to the letter.

11

12 10. On October 23, 1998. Defendant Rasa issued a letter addressed to each of the respective  
13 Commissioners wherein Defendant Rasa stated that he wished to "rescind" his prior assignment of his  
14 housing allowance to Tinian Hotel. *See* Def.'s Ex. D.

15

16 11. Also on October 23, 1998, Commissioner Vicente Manglona, the Chairman of Defendant  
17 TCGCC, issued a letter addressed to Esther Barr, the Executive Director of Defendant TCGCC,  
18 authorizing the release of Defendant Rasa's housing allowance directly to Defendant Rasa in  
19 accordance with the terms of Defendant Rasa's "Consultancy Agreement." *See* Def.'s Ex. B.

20

21 12. Neither Defendant Rasa nor Defendant TCGCC have made any effort to pay the \$5,200  
22 owed to Tinian Hotel for services rendered.

23

24 13. On March 4, 1999, the Tinian Hotel filed a Complaint setting forth two causes of action  
25 against Defendant Rasa and Defendant TCGCC alleging that defendants had a duty to pay \$5,200 to  
26 the Tinian Hotel for services rendered.

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1 14. On July 6, 1999, the Clerk of Court issued an Entry of Default against Defendant Rasa due  
2 to Defendant Rasa's failure to appear despite having been properly served with the Summons and  
3 Complaint.

### 4 5 III. CONCLUSIONS OF LAW

#### 6 A. Plaintiff's First Cause of Action / Liability of Defendant Rasa.

7 Defendant Rasa is liable to Plaintiff due to Defendant Rasa's failure to file a responsive pleading  
8 in the underlying matter and due to the subsequent Entry of Default issued by the Clerk of Court on July  
9 6, 1999.

#### 10 B. Plaintiff's Second Cause of Action / Liability of Defendant TCGCC / Principles of Agency.

11 Defendant TCGCC contends that Defendant Rasa had no authority to enter into a contract for  
12 services with Tinian Hotel whereby Defendant TCGCC would be liable to pay for such services.  
13 Tinian Hotel, however, asserts that the actions of Defendant TCGCC are indicative of an agency  
14 relationship whereby Commissioner Borja was a de facto agent of Defendant TCGCC and could  
15 therefore bind Defendant TCGCC and cause them to be liable for services rendered by Tinian Hotel to  
16 Defendant Rasa.

17 "There are three types of agency defined by the Restatement: actual, apparent, and inherent."  
18 *U.S.P.G., Inc. v. L.S.G. Lufihansa Service Saipan, Inc.* Civ. No. 98-0432 (N.M.I. Super. Ct. April  
19 6, 1000) (Decision and Order Denying Motion and Cross-Motion for Summary Judgment at 3) (*citing*  
20 RESTATEMENT (SECOND) OF AGENCY § 7 cmt. b (1958)).

#### 21 1. Actual Authority to Bind Defendant TCGCC.

22 "Actual authority requires that the principal has manifested an intent that the agent perform a  
23 specific action." *Id.* "This manifestation may occur by direct instruction or by reasonable inference." *Id.*

24 Here, Defendant Rasa's "Consultancy Agreement" specifically states: "[a]ny lease, purchase or  
25 rental agreement entered into by Consultant for housing, furniture or utility services shall be the sole  
26 responsibility of the Consultant." *See* Def.'s Ex. A (Consultancy Agreement). The explicit language of  
27 the "Consultancy Agreement" specifically precludes Commissioner Borja from having actual authority to  
28 cause Defendant TCGCC to be liable to pay Defendant Rasa or a third party for "housing, furniture or

1 utility services." Accordingly, the court finds that Commissioner Borja did not have "actual authority" to  
2 cause Defendant TCGCC to be liable to pay the \$5,200 of housing expenses incurred by Defendant  
3 Rasa at Tinian Hotel.

4 2. Apparent Authority to Bind Defendant TCGCC.

5 "Apparent authority requires that the words or conduct of the principal are communicated to a  
6 third party who on that basis relies on the agent." *U.S.P.G., Inc.*, Civ. No. 98-0432 at 3 (*citing*  
7 RESTATEMENT (SECOND) OF AGENCY § 27 (1958)). "[A]pparent authority to do an act is created as  
8 to a third person by written or spoken words or any other conduct of the principal which, reasonably  
9 interpreted, causes the third person to believe that the principal consents to have the act done on his  
10 behalf by the person purporting to act for him." *Id.* at 3-4. "An agent cannot create apparent authority  
11 acting alone." *Id.* at 4 (*citing Property Advisory Group, Inc. v. Bevona*, 718 F. Supp. 209  
12 (S.D.N.Y. 1989)).

13 Here, on April 27, 1998, Commissioner Borja and Defendant Rasa went to the Tinian Hotel  
14 and requested accommodation. The staff at the Tinian Hotel were aware that Commissioner Borja was  
15 a member of Defendant TCGCC.

16 The actions of Commissioner Borja in accompanying Defendant Rasa to the Tinian Hotel,  
17 though not an explicit statement promising to pay for Defendant Rasa's housing, was action by  
18 omission. Commissioner Borja, after being told by Defendant Rasa that he needed a person to tell the  
19 staff of the Tinian Hotel that he was an "employee" of Defendant TCGCC, acted in a negligent manner  
20 by not telling the staff of the Tinian Hotel that Defendant TCGCC would not be responsible for costs  
21 incurred by Defendant Rasa. *See C.A.R. Transp. Brokerage Co, v. Darden Restaurants, Inc.*, 213  
22 F.3d 474, 479 (9th Cir. 2000) ("An agent acting within his apparent or ostensible authority binds the  
23 principal where the principal has intentionally or negligently allowed others to believe the agent has  
24 authority").

25 Further, although Commissioner Borja did not affirmatively state that Defendant TCGCC  
26 would not be responsible for costs incurred by Defendant Rasa at the Tinian Hotel, his inaction while  
27 Defendant Rasa arranged for the services of the Tinian Hotel conveyed to the Tinian Hotel that  
28 Commissioner Borja was an "agent" of Defendant TCGCC with the apparent authority to bind

1 Defendant TCGCC. This inaction or acquiescence is sufficient grounds to find that Commissioner  
2 Borja had the apparent authority to cause Defendant TCGCC to be liable to pay the costs incurred by  
3 Defendant Rasa at the Tinian Hotel. *See Lux Art Van Service, Inc. v. Pollard*, 344 F.2d 883, 888  
4 (9th Cir. 1965) ("[Apparent authority] arises not by authorization in the consensual sense, but from the  
5 principal's negligent omission or his acquiescence in the agent's activities"). Accordingly, the court finds  
6 that Defendant TCGCA is liable to pay \$5,200 to the Tinian Hotel.

7         Also, it must be noted that even if Commissioner Borja was not deemed to be an agent of  
8 Defendant TCGCC on April 27, 1998, later circumstances would, in retrospect, give credence to  
9 Tinian Hotel's theory that Commissioner Borja was an agent of Defendant TCGCC. Specifically,  
10 Commissioner Borja and other Commissioners knew or should have known as of August 8, 1998, that  
11 Defendant Rasa had not paid the Tinian Hotel despite the fact that Defendant Rasa had received a  
12 portion of his housing allowance. Furthermore, on October 23, 1998, Defendant TCGCC was again  
13 made aware that the Tinian Hotel had not been paid for its services to Defendant Rasa. Defendant  
14 TCGCC, however, found it acceptable to release all of Defendant Rasa's housing allowance directly to  
15 Defendant Rasa on the same day. Given the foregoing, the actions of Commissioner Borja and  
16 Defendant TCGCC from August 8, 1998, until October 23, 1998, support the court's conclusion that  
17 Commissioner Borja had at least "apparent authority" to bind Defendant TCGCC.

18         3. Inherent Authority to Bind Defendant TCGCC.

19         "Inherent agency power has often been loosely referred to under the principle of apparent  
20 authority in court decisions although it is a separate type of agency." *U.S.P.G., Inc.*, Civ. No. 98-0432  
21 at 4 (*citing* RESTATEMENT (SECOND) OF AGENCY § 8A cmt. b (1958)). "Inherent agency power is  
22 derived 'solely from the agency relationship and exists for the protection of persons harmed by or  
23 dealing with a servant or other agent.'" *Id.* (*citing* RESTATEMENT (SECOND) OF AGENCY § 8A  
24 (1958)). "The risk of loss from an agent's disobedience falls on the principal because agents are  
25 fiduciaries trusted and controlled by the principal who generally act to benefit the principal." *Id.* (*citing*  
26 RESTATEMENT (SECOND) OF AGENCY § 8A cmt. b (1958)).

27         Here, Defendant TCGCC is responsible for Commissioner Borja's actions, even though such  
28 actions were negligent actions by omission, not directly approved by Defendant TCGCC. Accordingly,

1 the court finds that Commissioner Borja had the "inherent authority" to bind Defendant TCGCC.

2 C. Liability of Governmental Entities.

3 The court notes that the commissioners that comprise Defendant TCGCC should understand,  
4 and others in similar government positions should take heed, that they serve in a small yet  
5 closely-woven community and will be watched closely. Their actions, in certain circumstances, could  
6 result in liability attaching to the governmental entity of which they are a part.

7 **IV. DAMAGES/COSTS**

8 A. Unpaid Hotel Bills.

9 The court has the discretion to award actual damages. *See generally* RESTATEMENT (SECOND)  
10 OF CONTRACTS. Contract damages are not recoverable beyond an amount that the evidence  
11 establishes with reasonable certainty. *See* RESTATEMENT (SECOND) OF CONTRACTS § 352.

12 Defendant Rasa stayed at the Tinian Hotel from April 27, 1998, to August 6, 1998. During this  
13 time period, Defendant Rasa accumulated hotel bills in the amount of \$5,200. *See* Pl.'s Ex. 1  
14 (Statement of Account) at 1. Accordingly, the court orders that Defendant Rasa and Defendant  
15 TCGCC be jointly and severally liable to the Tinian Hotel in the amount of \$5,200.

16 B. Interest Accrued on Unpaid Hotel Bills.

17 The court has the discretion to award interest on the amount of the judgment rendered.  
18 Accordingly, the court orders that Defendant Rasa and Defendant TCGCC be jointly and severally  
19 liable to the Tinian Hotel for interest on the sum of \$5,200 at a rate of twelve percent (12%) per annum  
20 from March 4, 1999, the date the underlying Complaint was filed.

21  
22 C. Costs of Bringing Action.

23 The court has the discretion to award reasonable costs, including attorney fees, to the prevailing  
24 party. Accordingly, the court orders that Defendant Rasa and Defendant TCGCC be jointly and  
25 severally liable to the Tinian Hotel for reasonable costs incurred in maintaining and prosecuting the  
26 present matter.

27 The court has the discretion to award interest on reasonable costs. Accordingly, the court  
28 orders that Defendant Rasa and Defendant TCGCC be jointly and severally liable to the Tinian Hotel

1 for interest on the sum of all reasonable costs at a rate of nine percent (9%) per annum. The Tinian  
2 Hotel shall submit, within 30 days, an itemized summary of the costs incurred and an affidavit  
3 supporting the summary of the costs incurred. Defendant Rasa and Defendant TCGCC will then have  
4 15 days to submit any objection to the itemized summary of the costs incurred.

5 **V. CONCLUSION**

6 This memorandum decision shall constitute the findings of fact and conclusions of law of the  
7 court. Judgment shall be entered accordingly.

8

9 So ORDERED this 5th day of March, 2002.

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/s/  
JUAN T. LIZAMA, Associated Judge

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