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FOR PUBLICATION

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

MICRONESIAN ENVIRONMENTAL  
 SERVICES, LLC,

CIVIL ACTION NO. 21-0004  
 CIVIL ACTION NO. 20-0344

Petitioner,

v.

ORDER:

KINA B. PETER, in her official capacity as  
 the Public Auditor of the CNMI OFFICE  
 OF THE PUBLIC AUDITOR, JAMES A.  
 ADA, in his official capacity as the  
 Secretary of the CNMI DEPARTMENT OF  
 PUBLIC WORKS, FRANCISCO C.  
 AGUON, in his official capacity as Acting  
 Director of Procurement & Supply, DAVID  
 ATALIG, in his official capacity as the  
 Secretary of the CNMI DEPARTMENT OF  
 FINANCE, and TANG'S CORPORATION,

(1) GRANTING RESPONDENT  
 TANG'S CORPORATION'S  
 MOTIONS FOR  
 RECONSIDERATION, AND

(2) VACATING THE COURT'S  
 MAY 3, 2021 AND DEC. 9, 2021  
 ORDERS TO THE EXTENT  
 THEY ARE INCONSISTENT  
 WITH THIS ORDER

Respondents.

I. INTRODUCTION

THIS MATTER came before the Court on June 2, 2021, at 9:00 a.m. for a hearing on Respondent Tang's Corporation's ("Tang's") Motion for Reconsideration of the Court's May 3, 2021 Order Denying Respondent's Motions on two specific points regarding mediation and an evidentiary hearing. Petitioner Micronesia Environmental Services, LLC ("MES") was represented by Robert T. Torres, Esq. and Sean Frink, Esq. Respondent Tang's Corporation was represented by Michael W. Dotts, Esq. Respondents Francisco C. Aguon and David Atalig (collectively, the "Commonwealth") were represented by Assistant Attorney General Abbi Novotny. Respondent James A. Ada was represented by Assistant Attorney General Leslie Healer. The Office of the Public Auditor was represented by Joseph Przyuski, Esq.

By order of the Court, Presiding Judge Roberto C. Naraja

1 Tang's filed a renewed Motion for Reconsideration on December 16, 2021. On  
2 January 13, 2022, the Court notified the parties that it would rule on Tang's renewed  
3 Motion for Reconsideration without a hearing.

4 Based upon a review of the arguments, filings, and relevant law, Tang's Motions  
5 for Reconsideration are **GRANTED**. The Court vacates its previous orders directing the  
6 parties to meet and confer regarding mediation and ordering an evidentiary hearing.

## 7 II. PROCEDURAL BACKGROUND

8 In an order dated May 3, 2021 (the "May 3 Order"), this Court erroneously *sua*  
9 *sponte* ordered the parties to meet and confer to discuss scheduling for mandatory  
10 mediation and an evidentiary hearing. *See* Order Denying Respondent's Motions (filed  
11 May 3, 2021) at 2. None of the parties had requested that the matter be sent to mediation,  
12 and none had requested an evidentiary hearing.

13 Respondent Tang's Corporation ("Tang's") timely filed a Motion for  
14 Reconsideration on May 7, 2021, requesting that the Court reconsider its May 3 Order with  
15 regard to mediation and an evidentiary hearing. *See* Motion for Reconsideration (filed May  
16 7, 2021). Respondent James A. Ada, Secretary of the CNMI Department of Public Works  
17 ("DPW"), similarly objected to the May 3 Order on the grounds that mediation and an  
18 evidentiary hearing were not appropriate in an administrative appeal case. *See* Respondent  
19 Ada's Objection to Court Order Dated May 3, 2021 (filed May 12, 2021) at 3-5.  
20 Respondents Kina B. Peter of the Office of the Public Auditor ("OPA"), Francisco C.  
21 Aguon of the CNMI Division of Procurement and Supply ("P&S"), and David Atalig of the  
22 CNMI Department of Finance ("DOF") joined in Respondent Ada's objections to the May  
23 3 Order. *See* OPA's Notice of Joinder in Respondent Ada's Objection (filed May 13,  
24 2021); Commonwealth's Notice of Joinder to Respondent Ada's Objection (filed May 18,  
25 2021). Petitioner opposed Tang's Motion for Reconsideration on May 18, 2021, and  
26 Tang's filed its reply in support of its Motion for Reconsideration on May 26, 2021. *See*  
27 Petitioner's Opposition (filed May 18, 2021); Tang's Reply (filed May 26, 2021).

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1 The parties were heard on Tang’s Motion for Reconsideration on June 2, 2021 at  
2 9:00 a.m. The parties again appeared before the Court on October 13, 2021 for a status  
3 conference, following which the Court entered an order dated December 9, 2021 (the  
4 “December 9 Order”). See Order from October 13, 2021 Case Status Conference (filed  
5 December 9, 2021). In the December 9 Order, the Court ruled that it would not order the  
6 parties to engage in mediation but affirmed that it would hold a limited evidentiary hearing  
7 on Petitioner’s newfound allegations that there were irregularities in the procurement  
8 process and that certain data relied upon by the P&S Director in his ruling were not yet in  
9 the record. *Id.* at 2; see also Petitioner’s Opposition (filed May 18, 2021) at 3-5.

10 On December 16, 2021, Tang’s filed a renewed Motion for Reconsideration. See  
11 Tang’s Motion to Set Evidentiary Hearing or to Reconsider Evidentiary Hearing (filed  
12 December 16, 2021). Petitioner opposed Tang’s renewed Motion for Reconsideration on  
13 January 3, 2022. See Petitioner’s Opposition (filed January 3, 2022). On January 13, 2022,  
14 the Court notified the parties that it would rule on Tang’s renewed Motion for  
15 Reconsideration without a hearing. See Notice to Decide Pending Motions . . . Without a  
16 Hearing (filed January 13, 2022).

### 17 III. LEGAL STANDARD

18 A party’s request for reconsideration of a court order must be based upon 1) a need  
19 to correct clear error or prevent manifest injustice, 2) the availability of new evidence not  
20 previously attainable, or 3) an intervening change of controlling law. See *Commonwealth*  
21 *v. Guerrero*, 2014 MP 2 ¶ 2 (citing *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7); *Camacho v.*  
22 *J.C. Tenorio Enterprises*, 2 NMI 407, 413-14.

23 Under NMI R. Civ. P. 60(b), a court may relieve a party from an order if there is a  
24 mistake or if there is any other reason to justify the relief. NMI R. Civ. P. 60(b). The court,  
25 under Rule 60(b), has the authority to modify its order “upon a motion brought within a  
26 reasonable time.”<sup>1</sup> *Sullivan v. Tarope*, No. 03-0018-GA, 2006 WL 1109449, at \*7 (N. Mar. I.

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28 <sup>1</sup> Rule 2(g)(2) of the Commonwealth Rules of Procedure for Administrative Appeals allows the trial court to consider motions filed by the parties “on a case by case basis,” excluding

1 Apr. 18, 2006). Under NMI R. Civ. P. 59(e)(3), the Court may amend a judgment if  
2 “alteration or amendment of the judgment is necessary to correct a clear error or prevent  
3 manifest injustice.” NMI R. Civ. P. 59(e)(3).

#### 4 IV. DISCUSSION

##### 5 a. Mediation is Not Appropriate in This Case or Provided for in the Rules.

6 When this Court initially ordered the parties to meet and confer to discuss  
7 scheduling for mandatory mediation, *see* May 3 Order at 2, it did so pursuant to the  
8 Commonwealth Rules for Mandatory Alternative Dispute Resolution, which “shall apply to  
9 all civil actions except small claims actions and family law matters.” NMI R. ADR §  
10 1003(a). As Petitioner correctly points out in its Opposition to Tang’s Motion for  
11 Reconsideration, it is undisputed that this administrative appeal is a civil matter and not a  
12 small claims action or family law matter. *See* Petitioner’s Opposition (filed May 18, 2021)  
13 at 8. Petitioner also points out that “[j]udicial review of administrative appeals are not  
14 listed as an exception to the rules for mandatory mediation” and that the Rules of Procedure  
15 for Administrative Appeals do “not state that mediation is excepted.” *Id.*

16 However, courts “should avoid interpretations of [their] rules which would defy  
17 common sense [or] lead to absurd results.” *Lucky Dev. Co. v. Tokai U.S.A., Inc.*, 2 N. Mar.  
18 I. 450, 457 (1992). As Tang’s points out, the Rules of Procedure for Administrative  
19 Appeals, which govern this case, do not contemplate mediation, nor do they address  
20 settlement. *See generally* NMI R. P. Admin. App. That these rules do not contemplate  
21 mediation or settlement makes sense given that in most administrative appeals, the issue to  
22 be decided is whether an underlying agency decision must be upheld or overturned. Unlike  
23 other civil cases—for example a breach of contract case—in an administrative appeals case  
24 there are no damages for the parties to negotiate over. “If the agencies acted arbitrarily or

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27 motions for summary judgment. NMI R. P. Admin. App. 2(g)(2). Rule 2(g) provides that  
28 “[a]ll motions are governed by the Commonwealth Rules of Civil Procedure” except where  
the Commonwealth Rules of Procedure for Administrative Appeals conflict with the  
Commonwealth Rules of Civil Procedure, in which case the former shall govern. NMI R.  
P. Admin. App. 2(g).

1 otherwise violated the APA, then their decisions will be reversed. If not, the decision will be  
2 affirmed.” *See* Motion for Reconsideration (filed May 7, 2021) at 2.

3 The Court is also persuaded by Tang’s argument that mediation in administrative  
4 appeals involving an award of a contract after sealed bids would violate the premise behind  
5 awarding contracts in response to sealed bids and would invite bidders to challenge an  
6 award just to then negotiate a new contract in a court-ordered mediation. *See id.* at 2-3.  
7 Finally, ordering mediation in administrative appeals cases would invite further delay and  
8 potentially hold up the activities of the government, which would not be in the public  
9 interest. Rather, it is in the public interest for courts to review agency actions involving  
10 public contracts promptly.

11 For these reasons, the Court finds that mediation is not appropriate in this case and  
12 it was clear error for the Court to order the parties to mediation in its May 3 Order. The  
13 Court hereby vacates its May 3 Order to the extent it is inconsistent with this Order.

14 **b. The Time Has Passed for Petitioner to Request an Evidentiary Hearing.**

15 NMI R. P. Admin. App. 6(a) provides that the review of the administrative decision  
16 on appeal shall be conducted by the trial court without a jury and “shall only consider  
17 evidence which was made part of the record in the proceeding before the administrative  
18 agency.” NMI R. P. Admin. App. 6(a). There is generally no entitlement to evidentiary  
19 hearings in administrative appeals, though the reviewing court may conduct a limited  
20 evidentiary hearing if a party alleges that there were “irregularities in the procedure before  
21 the agency not shown on the record.” *See id.* Rule 6(c) further provides that “[a] request  
22 for oral argument or an evidentiary hearing on matters not in the record *shall* be made by  
23 the petitioner along with the filing of the petition.” NMI R. P. Admin. App. 6(c) (emphasis  
24 added). Should a respondent wish to request an evidentiary hearing, such request must be  
25 made “by motion within eleven days of petitioner’s request.” *Id.*

26 Here, Petitioner concedes that it did not request an evidentiary hearing in its  
27 Petition. *See* Petitioner’s Opposition (filed May 18, 2021) at 3-4 (“MES did not explicitly  
28 request an evidentiary hearing in its Petition . . .”). Nor did any Respondent request an

1 evidentiary hearing. Although Petitioner now argues that there were irregularities in the  
2 procurement process and asks the Court to allow it to amend its Petition to request an  
3 evidentiary hearing, the Court finds that the time to request an evidentiary hearing has  
4 already passed. The Petition was filed on January 17, 2021, and Petitioner failed to raise  
5 the issue of irregularities in the procurement process or request an evidentiary hearing until  
6 four months later in its Opposition to Tang’s Motion for Reconsideration. *See* Petitioner’s  
7 Opposition (filed May 18, 2021) at 5, fn.3.

8 It was clear error for the Court to *sua* sponte order an evidentiary hearing where (1)  
9 no party had requested an evidentiary hearing and (2) Petitioner’s belated request for an  
10 evidentiary hearing was not timely made. Accordingly, the Court vacates its May 3 Order  
11 and December 9 Order to the extent they are inconsistent with this Order. No evidentiary  
12 hearing shall be held in this case, and the Court will soon issue a scheduling order for the  
13 parties’ briefs.

14 **c. Even if Petitioner’s Request Were Timely, the Grounds Raised by Petitioner**  
15 **Do Not Warrant an Evidentiary Hearing.**

16 Although the Court denies Petitioner’s request for an evidentiary hearing on  
17 timeliness grounds, the Court also notes that the grounds raised by Petitioner for its request  
18 for an evidentiary hearing do not comply with NMI R. P. Admin. App. 6(a), which allows a  
19 reviewing court to conduct a limited evidentiary hearing only on the basis of “irregularities  
20 in the procedure before the agency not shown on the record.” NMI R. P. Admin. App. 6(a).

21 In its December 9 Order, the Court instructed Petitioner to “submit a list of  
22 evidence that it contends is not in the Record.” *See* December 9 Order at 2. Petitioner  
23 never submitted the list of evidence as ordered by the Court. However, in its Opposition to  
24 Tang’s renewed Motion for Reconsideration, Petitioner conceded that the evidence it  
25 contends was not included in the administrative record consists of the following:

- 26 (1) Evidence relating to whether ratification of the contract was ever considered by  
27 the P&S Director, and if not, why not;

1 (2) Evidence relating to what effect the OPA investigation had on the Protest  
2 Decision; and

3 (3) Evidence relating to whether potential ethical issues existed with regard to the  
4 agencies at issue being represented by Assistant Attorneys General all in one  
5 office and subject to the overall supervision of the CNMI Attorney General, and  
6 if so, its impact on the Protest Decision.

7 *See* Petitioner’s Opposition (filed January 3, 2022) at 2-3.

8 These are not irregularities in the procurement procedure. Petitioner’s first basis for  
9 an evidentiary hearing is already addressed in the existing administrative record,  
10 specifically in the Department of Finance Division of Procurement Services Director’s  
11 Report. *See generally* Exhibit 1 to Petition. Petitioner’s second basis for an evidentiary  
12 hearing—to hear evidence on what effect the OPA investigation had, if any, on the Protest  
13 Decision—does not constitute an irregularity in the procurement procedure or bid process,  
14 and nevertheless would be an exercise in futility given that the OPA investigation is strictly  
15 confidential by statute. It is extremely unlikely that any new relevant evidence will be  
16 uncovered by a probing into the subject. Finally, Petitioner’s third basis for an evidentiary  
17 hearing is entirely irrelevant and does not constitute an irregularity in the underlying  
18 procurement process because the agencies’ representation by the Office of the Attorney  
19 General in this case occurred *after* the Protest Decision on appeal. The Court cautions  
20 Petitioner that evidentiary hearings are not an appropriate vehicle for discovery fishing  
21 expeditions.

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**V. CONCLUSION**

**THEREFORE**, for the reasons stated above, Tang’s Motions for Reconsideration are **GRANTED**. No mediation or evidentiary hearing shall be held in this case, and the Court will shortly issue the parties’ briefing schedule. The Court’s May 3 and December 9 Orders are vacated to the extent they are inconsistent with this Order.

**IT IS SO ORDERED** this 18th day of January, 2022.

/s/  
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**ROBERTO C. NARAJA**, Presiding Judge