CABOT MANTANONA, LLP

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OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

007 15 2010

PRE NO. OPAPA: 10-004

BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY PROCUREMENT APPEAL

IN THE MATTER OF THE APPEAL OF) APPEAL NO.: OPA-PA-010-004)
HARBOR CENTER GUAM CO. LTD., And HARBOUR CENTRE PORT TERMINAL, INC.	APPELLANT'S REPLY TO OPPOSITION TO MOTION FOR PUBLIC AUDITOR TO RECUSE HERSELF

COMES NOW, Harbor Center Guam, by and through its attorneys, Cabot Mantanona LLP, respectfully submits this reply to Appellee's Opposition to Motion for Public Auditor to Recuse Herself.

Respectfully submitted this 10

day of ____

. 2010.

By:

ARAH STROCK

ABOT MANTANONA LLP

ttornevs for Harbor Center Guam

MEMORANDUM OF POINTS AND AUTHORITIES

The facts of this case are analogous to *In the Appeal of Teleguam Holdings LLC*Appeal No. OPA-PA-10-002. In both cases, an immediate family member of the Public

2001

In the Matter of the Appeal of Harbor Centre Guam Appeal No. OPA-PA-010-004

Reply to Opposition to Motion for Public Auditor to Recuse Herself

Page 2 of 2

Auditor receives a financial interest from one of the parties to the Appeal. Guam

Procurement law provides:

Disqualification of Public Auditor. The Public Auditor may recuse herself or himself at any time and notify all parties, or any party may raise the issue of disqualification and state the relevant facts prior to hearing. The Public

Auditor shall make a determination and notify all parties. In the event of disqualification or recusal of the Public Auditor, a procurement Appeal must be taken to the Superior Court of Guam in accordance with 5 G.C.A. §5480.

G.A.R. Div. 4, §12601.

As stated in Appellant's original Motion, all of the elements are satisfied. Appellee

argues that these cases are distinct due to the type of employment of James Brooks vs.

the type of employment of Terry Brooks. Appellant responds that regardless of the ethical

wall constructed around James Brooks at Lujan Aguigui and Perez, as a salaried employee

of the firm, he has a financial interest in all of the firm's cases, regardless of whether or not

he participated in them directly.

Therefore, the Public Auditor has the ethical duty not to participate in this appeal

because a member of her immediate family, her husband, James Brooks, has a financial

interest in this matter. Since the Public Auditor has an ethical duty not to participate in this

appeal, she should recuse herself pursuant to 2 G.A.R. Div. § 12601 and this appeal must

be taken to the Superior Court in accordance with 5 G.C.A. § 5480.

Respectfully submitted this

day of -

2010.

CABOT MANTANONA LLP

Attorneys for Harbor Center Guam

By:

SARAH STROCK