

State v. Hawaii Market Center

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State v. Hawaii Market Center

Case: State v. Hawaii Market Center (1971)

Subject Category: Security

Agency Involved: Hawaii Commissioner of Securities

Court: Hawaii Supreme Court

Hawaii

Case Synopsis: The Hawaii Supreme Court was asked to decide if the memberships sold by Hawaii Market Centers constitute a security to be regulated under Hawaii's state securities laws.

Legal Issue: What is the definition of an investment contract under Hawaii State Law?

Court Ruling: The Court ruled that the scheme in question was a security, but did so by adopting a new and different test than that used by other states. Hawaii Market Center (HMC) sold "founding" memberships to promoters who could earn money through selling additional memberships or referring others to shop at the store using the promoter's buyer's cards. The program focused on the marketing to additional promoters and not on the sale of merchandise to end-users. The Hawaii Supreme Court decided that the scheme was an investment contract because the money earned by the promoter was more like the money earned by an investment than a referral sales plan. The Court declined to adopt the

popular Howey definition of an investment contract, one where profits come solely from the efforts of others. Instead the court focused on the functional characteristics of an investment contract and concluded that in Hawaii an investment contract is the investment of initial value, subject to the risks of an enterprise, is induced by representations of profit, and the investor does not have practical and actual control over the decisions of the enterprise.

Practical Importance to Business of MLM/Direct Sales/Direct Selling/Network Marketing/Party Plan/Multilevel Marketing: Hawaii takes a functional approach to an investment contract, which may make their definition more expansive than other states'.

State v. Hawaii Market Center, 485 P.2d 105 (1971) : The Court ruled that the scheme in question was a security, but did so by adopting a new and different test than that used by other states. Hawaii Market Center (HMC) sold "founding" memberships to promoters who could earn money through selling additional memberships or referring others to shop at the store using the promoter's buyer's cards. The program focused on the marketing to additional promoters and not on the sale of merchandise to end-users. The Hawaii Supreme Court decided that the scheme was an investment contract because the money earned by the promoter was more like the money earned by an investment than a referral sales plan. The Court declined to adopt the popular Howey definition of an investment contract, one where profits come solely from the efforts of others. Instead the court focused on the functional characteristics off an investment contract and concluded that in Hawaii an investment contract is the investment of initial value, subject to the risks of an enterprise, is induced by representations of profit, and the investor does not have practical and actual control over the decisions of the enterprise.

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