Sekisui House leadership violates “good manager’s duty of care”

One month and a half since the boardroom coup, the press conference was full of lies. Who was the string-puller that had set a booby trap for fear of a shareholder lawsuit being brought against him?

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Once you tell a lie, you have to cover it up with an endless succession of lies. The press conference held on March 8 by a Sekisui House leadership trio of Chairman Toshinori Abe, Vice Chairman Shiro Inagaki and President Yoshihiro Nakai looked like a picture of that vicious cycle.

Following this magazine which reported the chairman replacement on Jan. 24 as a boardroom coup, the online version of The Nikkei quoted former Chairman Isami Wada as saying in his interview story that it was actually “removal from office.” The Asahi and other media followed suit, but Sekisui House simply ended up issuing a press release claiming that “there is no fact of ‘dismissal’ and it was a resignation on his own will.”

As details of the board meeting come to light, however, it becomes impossible to hide the fact that the incident was not a simple “generational change” but a question of blame for fraud that forced the company to lose 6.3 billion yen in a botched property deal arranged by a land swindler. What was decisive was an investigation report on the case submitted to the board meeting.

The report was drawn up over a period of half a year by a commission led by an outside director and certified public accountant. It drew a clear-cut conclusion that then President Abe was to blame as he had hastily put his seal of approval on the fraudulent deal in the belief that he would take credit for what would have been a lucrative transaction because an official in charge of the company’s Tokyo Condominium Department who had been cheated was his protégé.

4 “accomplices” in president’s seal of approval

A document shown to ex-Chairman Isami Wada by the present company leadership about his post-retirement offices, positions, etc.

Item	Until April 26, 2018	After April 27, 2018	After June 20, 2018
Office (20th floor, head office)	As at present	Exclusive room on 20th floor after repair of 20th floor during Golden Week	No exclusive room (rooms for auditors /retirees, 18th floor)
Office (branch)	As at present	Exclusive room on 12th floor after repair of 20th floor during Golden Week	No exclusive room (room for retirees, etc., as needed)
Car (head office)	As at present	No exclusive car (pool car as needed)	No exclusive car (pool car as needed)
Car (branch)	As at present	As at present	No exclusive car (pool car as needed)
Residence (Osaka)	As at present	As at present	Exit by end of June 2018
Post/title	Director, Adviser	Adviser	Adviser (till April 30, 2019)

[Posts in various organizations]

- Judanren* (term of office until June 2019) Retire at general assembly on June 20, 2018
  * Japan Federation of Housing Organizations
- Chairman, Housing Life Month Main Event Retire at general assembly on June 20, 2018
- Representative Director, Senior Housing Organization Retire at general assembly on June 20, 2018
- Chairman, Quality Housing Stock Association Retired at board meeting (no term of office) on Feb. 21, 2018
- Chairman, Eco First Promotion Council Retire at general assembly in April 2018 (when term of office ends)
- Also retire by end of June from posts such as director in other organizations

The deal did not come up for discussion on its advisability at the board meeting (no need for board approval for a transaction worth 10 billion yen or less under the company’s internal rules) and a document for approval was passed among four directors *after* the president’s approval. Assuming that they couldn’t reject it once the president had already approved it in advance, the directors stamped their seals.

Moreover, after applying for provisional registration for the transfer of ownership of the relevant property and making a down payment, an agent for the real landowner sent the company a content-certified document (a copy of which has been obtained by this magazine) four times but a company official in charge continued to insist that the document was intended as harassment to obstruct the deal. The commission report describes details of the threadbare plot in which the official concerned learned the deal was fraudulent only after the ownership transfer application was turned down. A commission source flatly termed the incident “a deceptive plot which would not be able to fool even small and medium-size real estate agencies."

On March 6, however, a "summary" of the report, reluctantly made public by the company, took the teeth out of it. It concealed the fact that the president had taken the initiative in sealing the deal, blurring as much as possible the responsibility of the president by citing "ingenuity of the land swindler" and "insufficient risk control" by the company's legal and real estate departments, and stating "the president owes a responsibility for his failure to appropriately recognize the overview of the transaction and material risk relating thereto."

Even at a press conference two days later, all senior officials arranged to tell the same story, with Chairman Abe saying, "I feel responsibility anyway," Vice Chairman Inagaki calling it "natural to assume responsibility for the outcome" and President Nakai admitting his "responsibility for the outcome by sealing a stamp of approval." They may have wanted to suggest that Wada is to blame for the outcome as well, but did not refer to the absence of a seal of approval stamped by Wada, who devoted himself to overseas operations then. The company already took punitive action on Dec. 8 last year, with the general manager (managing officer) of its Condominium Headquarters resigning and two others (the chief managers of its legal and real estate departments) dismissed from the posts. The company leadership is poised to bring the case to an end by making them scapegoats.

There are more untold lies. Right before the Jan. 24 board meeting, a Personnel Commission gathering was called, and it voted 5-0 to deem reasonable "Abe's resignation to take responsibility" on the basis of the report. The commission, consisting of six people – the chairman, president, two outside directors and two outside auditors –, took the vote after Abe vacated the meeting.

Later in the day, the 11-member board met to discuss a motion calling for Abe's resignation, but the vote ended up in a 5-5 tie (with Abe withdrawing from the ballot) and the meeting failed to pass the motion. With Abe back, the full board voted 6-5 in favor of a motion calling for the replacement of Wada with Inagaki as chair of the meeting. The session was then rushed until a motion was tabled to dismiss Wada from chairmanship. It is said that it was Inagaki who had crafted the scenario in advance.

A mastermind as he was, Inagaki distorted facts using periphrasis and rephrasing as if in the case of the rewriting of official documents associated with the Moritomo Gakuen land deal scam.

"Mr. Wada was advised to resign to protect his honor and he offered to step down on his own. The report does not go as far as proposing personnel punishment. The board rejected the motion to dismiss Mr. Abe because it judged that he was not to blame to the extent of being removed. The main reason for the motion to dismiss Mr. Wada was to build a new system of governance," says the Sekisui House release.

The release did not mention the fact that it was board meeting chair Inagaki who urged (or rather forced) Chairman Wada three times to "quit voluntarily" because his honor would be impaired if the board passed a motion to remove him from office. Neither did it mention that the investigative report that evidently put the blame on the president was distributed at the board meeting, nor mention that if the Personnel Commission's conclusion indicating the appropriateness of the president resignation was ignored it would be breach of "a good manager's duty of care" under Article 644 of the Civil Code. The article says: "A mandatary shall assume a duty to administer the mandated business with the care of a good manager and compliant with the main purport of the mandate." Moreover, the release replaced wording of the motion's failure to be passed as being "voted down." It was a coup which may be called a model case to take the teeth out of governance under the excuse of the Personnel Commission's lack of decision-making authority.

Why did the top management led by Abe resort to the revolt? Perhaps it was because he was afraid of possibly being targeted as an individual by a shareholder suit if he were to step down to take responsibility for incurring a special loss of 5.5 billion yen. It was after the investigation commission submitted an interim report last fall that Abe detected the likelihood of being forced to resign. He was emotionally telling his aides then that he "did not commit any misconduct and would never quit even if it cost me my life." He apparently went ahead in secret with his boardroom coup plot to oust Wada.

Grant of honors for double-crossing officers

The four directors who kept pace with the president and stamped their seals of approval must have been equally scared of a possible shareholder suit. In all probability, they were unable to reject the president's menacing rhetoric that they "swim together or sink together.” Voting against Abe’s dismissal were Senior Managing Officer Takashi Uchida and two rank-and-file directors – Kunpei Nishida and Yosuke Horiuchi – besides Inagaki and Nakai. In particular, Nishida and Horiuchi are said to have betrayed Wada when they had pledged allegiance to him until the night before, suggesting deliberate maneuvering behind the scenes. At a general shareholders meeting scheduled for April 26, reward-oriented appointments as senior board members must be among agenda items.

The chairman of the investigation panel had sought “the publication of the entire report,” saying “a summary of the report will be of no use.” But the company leadership pushed ahead with a summary for the reason of “maintaining confidentiality for police investigations,” saying that the full report will be published once measures for the prevention of a recurrence are put into shape. But no date for publication has been made clear.

Wada, now wearing “the emperor’s new clothes,” is seeking advice from acquaintances in the business community as well as politicians and lawyers he knows of but has failed to come up with any effective means. His choice to wait until the publication of the whole report has proved a fatal error, with opportunities for recovering lost ground fading away.

After the upcoming general meeting of shareholders, he is set to be forced out of the chairman’s office, having to use a common room for retirees and losing a chauffeured car for exclusive use and a secretary. He is also being urged by the company to exit his residence, a leased condominium in a company-owned condo tower, by the end of June. Moreover, he is being “advised to quit” all posts in industry organizations.

On March 5, an individual shareholder submitted a petition to the board of auditors seeking the launch of a shareholder suit against Abe to demand damages. Inagaki appears to be trying to bring an external auditor over to his side. If the company does not bring the suit within 60 days, the case will be the individual shareholder’s direct litigation. But this may mean the shareholder will be playing into the company’s hands. *(Honorifics omitted)*