

## MEMORANDUM

TO: Sekisui House Ltd. Shareholders and Potential Plaintiff Representatives

FROM: Matsuoka Naoki, Esquire, Osaka City Law Office, Plaintiffs' Counsel

RE: Executive Summary on Lawsuit Against Key Sekisui House Ltd. Directors Implicated in Land Scandal

DATE: October 15, 2019

---

On behalf of Sekisui House Ltd. ("Sekisui") shareholders, my law firm is suing **Toshinori Abe** and **Shiro Inagaki**, two current Sekisui Board directors. Sekisui is an Osaka-based Japanese home builder listed on the Tokyo Stock Exchange and constituent company in the Nikkei 225 Index. As a prominent Japanese publicly traded company, many U.S. institutional investors and others hold Sekisui shares. On behalf of Sekisui shareholders, we have filed a lawsuit in Osaka District Court and are seeking damages of 5.55 billion yen (US\$51.9 million)<sup>1</sup> from **Abe** and **Inagaki** ("Defendants") the amount of Sekisui's loss in the Gotanda Land Scandal. Defendants are the cause of Sekisui's significant financial debacle and continuing cover up of causing the Scandal and resulting loss that took place in the summer of 2017. Based upon discovery in the lawsuit, plaintiffs are adding two other current directors, **Yoshihiro Nakai** and **Takashi Uchida** as Defendants for also being responsible for the loss and cover up of Defendants' wrongdoing. Shockingly, Defendants along with the two additional Defendants still are on Sekisui' Board and effectively control the Company.

### **Abe and Defendants' Actions Caused the Gotanda Land Scandal**

At the time of the Scandal, **Abe** was the President, COO, Board director and oversaw land acquisition in Japan for development. He was the catalyst for Sekisui buying the Gotanda Land Scandal property in Tokyo. The property was and is a prime Tokyo parcel with an old hotel on site that required demolition in order to be developed. **Abe** visited the property and pressed subordinates for Sekisui to purchase it. I have reviewed and possess a copy of the internal Sekisui document as a case record evidencing **Abe's** chop reflecting the earliest date authorizing the property purchase followed by the later dated authorization chops of **Inagaki** (then CFO and Board director), **Nakai** (then managing executive officer and Board director) and **Uchida** (then senior managing executive officer and Board director). The document has a pencil erasure by **Abe's** chop that can still be read that "**Abe** had personally visited the property." The erasure appears to be a coverup of the fact that Abe had unduly impressed his subordinates to sign-off on the property purchase.

---

<sup>1</sup> An exchange rate of 107 yen per US\$1 is used for fx translations.

## **Abe and Defendants Ignored Overwhelming Numbers of Red Flags in Causing the Massive Loss**

Through this litigation, I have discovered numerous wrongful acts by Defendants and red flags that were recklessly missed or intentionally ignored by Defendants in pursuing the property purchase, which include:

- On April 18, 2017, **Abe** visited the property and decided to purchase it. He did so at a time that it was generally known that this property was not for sale as the true owners had repeatedly refused other developer offers.
- Defendants dealt with IKUTA, an intermediary, which claimed to represent Ebisawa who was the true property owner, and engaged in a plan to purchase the property through IKUTA
- Defendants did no effective due diligence on IKUTA nor attempted to contact or conduct any type of research on the real Ebisawa to confirm the real Ebisawa's intention to sell, confirmation of her identity, nor IKUTA's authority to act on behalf of the true owner.
- Before paying the purchase price, Defendants knew or had reason to know that IKUTA had changed its charter from real estate intermediary to a paper company with a very similar name, which was a major red flag that needed to be investigated, but was not.
- To induce Defendants to engage in the scam Gotanda property transaction, the fake Ebisawa agreed to purchase certain unpopular condominiums developed by Sekisui for 750 million yen; however, the fake Ebisawa did not pay cash for these condos, but simply reduced the net proceeds IKUTA was to receive from Sekisui for the purchase of the "Gotanda property."
- Defendants recklessly agreed to allow IKUTA to make a 1 billion yen profit (purportedly a finder's fee) by agreeing to pay 7 billion yen to IKUTA with knowledge that Ebisawa, the purported property owner, had agreed to this and would receive only 6 billion yen of the proceeds for the property.
- Without proper due diligence, Defendants executed a land sales agreement on April 24, 2017 and paid a 1.4 billion yen (US\$13.1 million) deposit to IKUTA. Defendants missed the fact that the fake Ebisawa had written a wrong address in the transaction documents. The agreement called for the demolition of the hotel, a survey of the property and a confirmation of boundary lines with the neighbors, before closing and payment of the purchase price.
- The real Ebisawa found out about the proposed fraudsters' sale to Sekisui and sent four (4) certified mail letters warning Defendants that they were dealing with fraudsters with no right to sell the property. The warning letters contained information that only the true owner would know. Nonetheless, Defendants completely ignored these warning letters.
- Defendants "confirmed" the property owner's identity by relying on a signed statement generated by the fraudsters stating that "I am the true owner."
- In a pre-close walk through of a building on the property, the fraudsters sent a purported attorney of the owner who unlocked the backdoor of building and said the the owner was ill and could not meet.
- Despite the numerous red flags, Defendants on June 1, 2017 closed and paid the remaining 4.9 billion yen (US\$45.8 million) purchase price two months earlier than the contracted closing date and without verifying title to the property through customary detailed title search due

diligence, without demolition of the hotel, a survey and a confirmation of boundaries, and without speaking with the property neighbors.

- The closing was held at a Sekisui office location. At the closing meeting, Defendants did not require fraudsters to produce original certificates showing title to land, but allowed the attorney for the fake owner to draft a document “certifying” property title. In this fraudulent document, Sekisui staff witnessed the fake lawyer putting down the wrong date of the real owner’s birth date.
- Coincidentally, while the closing meeting was occurring, the real Ebisawa called the police to demand Sekisui staff to cease and desist from coming onto her property, which she considered trespassing, and in response the police came to the property and asked the Sekisui staff to accompany them to the police station. Incredibly, Defendants declined the police request, ignored this huge red flag and continued on with the closing and payment to the fraudsters.
- Defendants paid IKUTA in an unconventional way through small denomination “deposit checks.” This allowed the fraudsters to readily convert the checks to cash, for which no cash has been recovered as of the date of this memorandum.
- Defendants caused Sekisui to lose 5.55 billion yen (US\$51.9 million) -- calculated as follows: Sekisui paid 7 billion yen (US\$65.4 million) to IKUTA, offset by 750 million yen (US\$7 million) for the condo sale as well as 700 million yen (US\$6.5 million) retained for unknown reasons, thereby giving rise to a net 5.55 billion yen loss or US\$51.9 million loss to Sekisui and its shareholders.

### **The “COVER UP” -- Sekisui Investigation Report and Abe and Defendants’ Suppression of Report**

After it became clear that the Company had been scammed and had taken a major loss in the fraudulent land deal, on September 7, 2017 (three months after the actual loss was confirmed), a Sekisui committee of outside directors (the “Investigation Committee”) was formed to investigate who internally was responsible for this debacle and how to ensure it never happens again. After extensive investigation, the Investigation Committee on January 24, 2018 made its written report (the “Investigation Report” or the “Report”). The Report revealed many of the facts and circumstances as cited in the bullet points above. It pinpointed blame on **Abe** and the Defendants for their significant management failures in causing the Scandal and resulting Sekisui loss. The Investigative Report was harsh on Defendants, but could have been even harsher if drafted by third parties with no personal relationship to them.

On the same day that the Committee released the Investigation Report to the Board of Directors at Sekisui, the Report was submitted to Sekisui’s Personnel Compensation Advisory Committee (the “PCAC”). The PCAC was comprised of **Abe**, Isami Wada (then Sekisui’s Chairman), and five independent directors. With **Abe** recused from the vote, the PCAC unanimously voted to fire **Abe** for his significant failures that cause the Scandal and Company loss.

**Abe** and Defendants moved quickly to silence and squash the PCAC action, and at a Sekisui Board meeting in the afternoon of January 24, 2017, coalesced a narrow Board vote to stay in

power and oust Chairman Wada by controlling the Company narrative that Wada had sought to retire. **Abe** became Chairman and, through Defendants, took control over the Company. Since then, Defendants focus has been and continues to be to bury the Investigative Report and have time fade memories about the Gotanda Land Scandal.

Through this cover up, **Abe** and Defendants were re-elected to the Board in April 2018 and will serve two years until the April 2020 shareholders' meeting. Since **Abe** and Defendants' control of Sekisui, the Company has made no efforts to recover the stolen funds nor institute legal action against IKUTA or any other fraudster[s] involved in the brazen theft. This raises the inference that **Abe** and Defendants may have been bribed, receiving kick-backs or otherwise gaining material advantage from the fraudsters.

### **Status of the Lawsuit against Abe and Defendants**

Today, **Abe** is Sekisui's Chairman and a representative Board director; **Inagaki** is Sekisui Vice Chairman and a representative Board director; **Nakai** is President and a representative Board director; and **Uchida** is a Vice President and a representative Board director.

On behalf of Sekisui Shareholders, we commenced this lawsuit against **Abe** in July 2018 and added **Inagaki** in August 2018. **Nakai** and **Uchida** will be added as Defendants soon. Plaintiffs have vigorously sought public disclosure of the Investigation Report through this litigation. Sekisui under the control of Defendants have refused disclosure citing that the Report was for "internal use only" and disclosure would infringe upon peoples' privacy. The District Court ruled that the Report was not prepared solely for Company internal use, but was expected to be disclosed to shareholders and other stakeholders. Defendants immediately appealed to Osaka's High Court. The High Court reviewed the Report in-camera, and dismissed Defendants' appeal and affirmed the District Court's holding. Although Defendants have submitted the Report to the court, Defendants continue to attempt to prevent its public disclosure by petitioning now for restrictions on inspection and copying the Report by anyone other than plaintiffs. Defendants also are attempting to delay a trial date.

### **Final Observations**

- It can only be described as a major Japanese corporate governance failure for Sekisui's Personnel Compensation Advisory Committee to be silenced and **Abe** and Defendants taking control of the Company in the manner they did as well as their continued cover up of the cause of the Scandal and censorship of the Investigative Report.
- The press suspects that organized crime may have been involved in the Gotanda Land Scandal and the aberrant actions of Defendants appear that they might be working with such group[s].
- Lower level employees have been fired as scape goats for the Scandal. After the Scandal, talented employees not squarely aligned with Defendants have been forced out of the Company. Employees cannot speak truthfully against Defendants for fear of retaliation.

- No measures appear to have been instituted by Defendants to prevent the reoccurrence of another like-type scandal.
- The press has noted that Defendants have increased their director remuneration at a time that rank and file employees have taken compensation cuts, which has demoralized employees. **Abe** appears to have cut a quid pro quo with Defendants to stay in power.

I encourage all shareholders and other Sekisui stakeholders to stay vigilant about this case and its outcome. If you have any questions or comments, or wish to join the lawsuit as a party, please contact the undersigned.

**ATTORNEY**

**CONTACT**

**INFORMATION**

**Matsuoka Naoki**

**Osaka City Law Office**

**Irisho-Yagi Building 10F**

**2-3-9 Kitahama, Chuo-ku**

**Osaka 541-0041, Japan**

**Tel. 81-6-6228-1166**

**Email [matsuoka@osakacity-law.jp](mailto:matsuoka@osakacity-law.jp)**