

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----- In the Matter of -----)  
FRANK SOARES, JR., )  
dba B&J TRUCKING )  
Notice of Failure to Comply )  
With Hawaii Revised Statutes )  
and Commission's Regulations )  
Order to Show Cause Why )  
Respondent's Operating )  
Authority Should Not Be )  
Suspended or Revoked. )  
\_\_\_\_\_)

DOCKET NO. 02-0249

DECISION AND ORDER NO. 20241

Filed June 19, 2003  
At 2:00 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

CITY OF CONSUMER ADVOCATE  
DEPT. OF LABOR & INDUSTRY  
CONSUMER AFFAIRS  
STATE OF HAWAII

2003 JUN 19 P 4:21

RECEIVED

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 02-0249  
Decision and Order No. 20241

DECISION AND ORDER

I.

On May 12, 2003, the duly appointed hearings officer issued Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer (recommended decision) regarding the above-entitled matter. The recommended decision was served upon FRANK SOARES, JR., dba B & J TRUCKING (Respondent) on May 12, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On May 22, 2003, Respondent paid \$750.00 in civil penalties as set forth in the recommended decision. Based on the above, the commission finds that Respondent has fully complied, although belatedly, with the motor carrier laws, rules, and regulations, and concludes that the portion of the recommended decision that sought to affirm the civil penalty should be modified to acknowledge Respondent's compliance.

Accordingly, upon a review of the entire record in this matter and pursuant to Hawaii Revised Statutes § 269-6, we conclude that the recommended decision, except as modified herein and attached hereto as Exhibit A, should be adopted as the commission's final decision and order in this matter. Moreover, in light of Respondent's prompt payment of the civil penalty, we conclude that this matter should be closed.

II.

THE COMMISSION ORDERS:

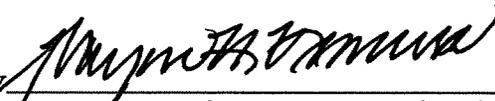
1. The recommended decision regarding, except as modified herein and attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.

2. This docket is closed.

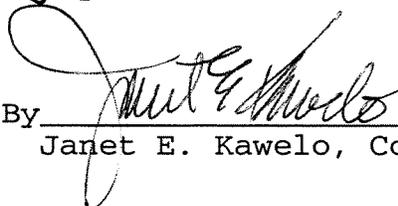
DONE at Honolulu, Hawaii the 19th day of June, 2003.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By   
Janet E. Kawelo, Commissioner

  
Catherine P. Awakuni  
Commission Counsel

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DOCKET NO. 02-0249  
FINDINGS OF FACT  
CONCLUSIONS OF LAW, AND  
RECOMMENDED DECISION  
AND ORDER OF  
HEARINGS OFFICER

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED DECISION AND ORDER OF HEARINGS OFFICER

I.

INTRODUCTION

By Order No. 19560, filed on September 30, 2002, FRANK SOARES, JR., dba B&J TRUCKING, (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to show cause why Respondent's certificate of public convenience and necessity (CPCN) number 5114-C should not be suspended or revoked for failing to pay the penalty imposed pursuant to Hawaii Revised Statutes (HRS) § 271-27(h) and Hawaii Administrative Rules (HAR) §§ 6-62-42(d) and 6-62-24(b), for Respondent's untimely filing of his annual financial report (AFR) and payment of his annual motor

**EXHIBIT A**

carrier gross revenue fee (Fee), pursuant to HAR §§ 6-62-42(a) and 6-62-24(a).<sup>1</sup>

An order to show cause hearing (hearing) was held at 9:00 a.m. on October 29, 2002, at the Public Utilities Commission Hearing Room, 465 South King Street, Room B-3. Frank Soares, Jr., was present at the hearing. His wife, Yvonne Lamoureux, was also present at the hearing and testified on his behalf.<sup>2</sup> Hearings officer Benedyne S. Stone presided over the hearing.

Based upon a review of the record and the testimony presented at the hearing, the issue is whether Respondent's CPCN should be suspended or revoked for his failure to pay the penalty associated with the untimely (1) filing of his AFR and (2) payment of his Fee, in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

Having considered the testimony and other evidence presented at the hearing, and the entire record in this matter, this hearings officer hereby renders the following findings of fact, conclusions of law, and recommended decision and order.

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<sup>1</sup>HAR § 6-62-42(a) provides that the AFR must be filed with the commission by April 30 of each year. HAR § 6-62-24(a) provides that the Fee must be paid to the commission on or before April 30 of each year.

<sup>2</sup>Members of the commission's audit staff were sworn in and remained present during the hearing in the event they would be called upon to testify in the instant matter.

II.

FINDINGS OF FACT

1. On July 19, 2002, the commission received Respondent's AFR for 2001 and Fee, along with a note from Respondent that those items had been mailed, at an earlier date, to the wrong address.<sup>3</sup>

2. By commission letter sent on July 22, 2002, Respondent was notified that a penalty of \$1,416.86 was being assessed for the delinquent filing of the AFR and late payment of the Fee.

3. By letter filed on July 29, 2002, Respondent requested a waiver of the assessed penalties.

4. At the hearing, Respondent again requested a waiver or mitigation of the penalties.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, this hearings officer makes the following conclusions of law. Any findings of fact herein improperly designated as a conclusion of law should be deemed or construed as a finding of fact.

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<sup>3</sup>Pursuant to HAR § 6-61-48, this hearings officer takes official notice of certain facts contained in the commission's motor carrier records.

1. HRS § 271-19 authorizes the commission, after notice and hearing, to suspend or revoke any CPCN, in part or in whole, if the holder is found to be in violation of any of the provisions of chapter 271, HRS.

2. HAR § 6-62-42(d) provides, in relevant part, that a penalty may be imposed by the commission upon a motor carrier who fails to file an AFR with the commission by April 30 of each year.

3. HAR § 6-62-24(b) provides, in relevant part, that a penalty may be imposed by the commission upon a motor carrier who fails to pay its Fee to the commission on or before April 30 of each year.

4. Based on the above-stated findings of fact, this hearings officer concludes that penalties were properly imposed upon Respondent pursuant to HAR §§ 6-62-42(d) and 6-62-24(b).

#### IV.

##### RECOMMENDED DECISION AND ORDER

1. Based upon the aforementioned, this hearings officer recommends that Respondent's civil penalty should be AFFIRMED for the untimely filing of Respondent's AFR and Fee.

2. However, there was mitigating evidence presented at the hearing to support a reduction of Respondent's assessed penalty. In particular, Respondent's illness forced his wife to assume the responsibility for submitting Respondent's Fee and AFR.

3. Based upon the foregoing, this hearings officer recommends that the assessed penalty of \$1,416.86, imposed on Respondent pursuant to HRS § 271-27(h) and HAR §§ 6-62-42(d) and 6-62-24(b), be reduced to \$750.00.

4. This hearings officer also recommends that Respondent be made to pay the reduced penalty in cash, or by cashier's check, or money order within 30 days after the commission's final order is issued in this docket.

5. In the event that Respondent has not completed payment of the reduced penalty within 30 days after the commission's final order in this matter is filed, this hearings officer then recommends that Respondent's CPCN be suspended or revoked.

DATED: Honolulu, Hawaii this 12th day of May, 2003.



Benedyne S. Stone  
Hearings Officer  
Public Utilities Commission

Frank Soares, Jr. 02-0249

Frank Soares:la

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommended Decision and Order of Hearings Officer upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS (VIA PICKUP)  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

FRANK SOARES, JR.,  
dba B&J TRUCKING  
RR 3 Box 1112  
Pahoa, HI 96778

*Leatrice G. Asahi*

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Leatrice G. Asahi  
Clerk

DATED: May 12, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20241 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

FRANK SOARES, JR., dba B&J TRUCKING  
RR 3 BOX 1112  
PAHOA, HI 96778

BENEDYNE S. STONE  
HEARINGS OFFICER  
PUBLIC UTILITIES COMMISSION  
465 S. King Street, Room 103  
Honolulu, HI 96813

  
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Karen Higashi

DATED: June 19, 2003