

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
HANDICABS OF THE PACIFIC, INC.)
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. 02-0272

DECISION AND ORDER NO. 20246

RECEIVED
2003 JUN 20 P 4:18
DIV. OF CONSUMER AFFAIRS
PUBLIC UTILITIES DIV.
CONSUMER AFFAIRS

Filed June 20, 2003
At 8:00 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

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

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

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HANDICABS OF THE PACIFIC, INC.)	Docket No. 02-0272
)
Notice of Failure to Comply)	Decision and Order No. 20246
With Hawaii Revised Statutes)	
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Order to Show Cause Why)	
Respondent's Operating)	
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Suspended or Revoked.)	
_____)	

DECISION AND ORDER

I.

On March 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 HANDICABS OF THE PACIFIC, INC. (Respondent) on March 12, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On March 19, 2003, Respondent paid \$2,398.45 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.

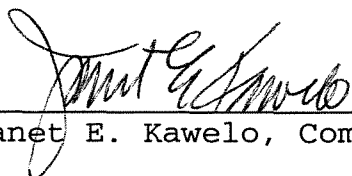
2. This docket is closed.

DONE at Honolulu, Hawaii the 20th day of June , 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

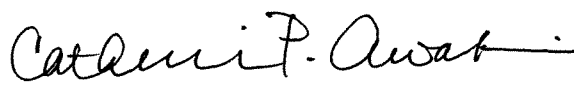
By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

Handicab:la

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of -----)	
HANDICABS OF THE PACIFIC, INC.)	DOCKET NO. 02-0272
Notice of Failure to Comply)	FINDINGS OF FACT
With Hawaii Revised Statutes)	CONCLUSIONS OF LAW, AND
and Commission's Regulations)	RECOMMENDED DECISION
Order to Show Cause Why)	AND ORDER OF
Respondent's Operating)	HEARINGS OFFICER
Authority Should Not Be)	
<u>Suspended or Revoked</u>)	

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

I.

INTRODUCTION

By Order No. 19583, filed on September 30, 2002, HANDICABS OF THE PACIFIC, INC. (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 0915-C should not be suspended or revoked for failure to comply with Hawaii Revised Statutes (HRS) §§ 271-25 and 271-36 before the April 30, 2002 deadline for compliance had passed.¹

¹HRS § 271-25 requires Respondent to file an annual financial report with the commission, while HRS § 271-36 requires Respondent to pay an annual motor carrier gross revenue fee. Hawaii Administrative Rules (HAR) § 6-62-42 provides that the annual financial report must be filed with the commission by April 30 of each year. Section 6-62-24, HAR provides that the motor carrier gross revenue fee must be paid to the commission on or before April 30 of each year.

EXHIBIT A

An order to show cause 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. Representing Respondent was Alan Hewson, an owner and chief executive officer of Respondent, along with Lundsford Phillips, attorney for Respondent.² 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 Respondent's failure to file a timely annual financial report with the commission, and to pay its annual motor carrier gross revenue fee to the commission in a timely manner, in violation of the State of Hawaii (State) motor carrier laws, rules, and regulations.

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

II.

FINDINGS OF FACT

1. On May 3, 2002, the commission received Respondent's annual motor carrier gross revenue fee for the year

²Members 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.

2001, and a request to extend the due date for Respondent's annual financial report.³

2. Pursuant to HAR § 6-62-24, Respondent's annual motor carrier gross revenue fee for 2001 was due to the commission "on or before April 30" of 2002.

3. Pursuant to HAR § 6-62-42, Respondent's annual financial report of its motor carrier operations was due to be filed with the commission "by April 30 of [2002]".

4. On May 30, 2002, by commission letter, Respondent was notified that a penalty of \$2,398.45 for the delinquent filing of its annual financial report and late payment of its motor carrier fees was being assessed against it, pursuant to HRS § 271-27(h) and HAR § 6-62-42.⁴

5. On July 15, 2002, the commission received a check from Respondent in the amount of \$2,398.45 for payment of penalties, along with a request for mitigation of the penalty amount.

6. On September 13, 2002, the commission returned Respondent's check for \$2,398.45 with instructions to defer its request for mitigation to the order to show cause hearing.

³At the time of Respondent's request, it was informal commission policy to allow those motor carriers with motor carrier gross revenues of over \$200,000 to request a 30-day extension for filing the annual financial report if the request was made by April 30 of the year. This extension policy has since been discontinued.

⁴Pursuant to HAR § 6-61-48, this hearings officer takes official notice of those facts contained in the commission's motor carrier records.

III.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the 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.

1. With regard to HRS § 271-36, HAR § 6-62-24 provides that every motor carrier shall pay its motor carrier fees to the commission on or before April 30 of each year.

2. With regard to HRS § 271-25, HAR § 6-62-42 provides that each motor carrier shall file with the commission an annual financial report by April 30 of each year.

3. HRS § 271-27(h) provides, in relevant part, that any motor carrier who fails or refuses to comply with any provision of chapter 271, HRS, or any rule, requirement, or order, may be assessed a civil penalty payable to the State.

4. Based on the above-stated findings of fact, this hearings officer concludes that because Respondent's motor carrier fees and annual financial report were received by the commission after the April 30 deadline, that Respondent was in violation of HRS §§ 271-25 and 271-36, and HAR §§ 6-62-24 and 6-62-42.

IV.

RECOMMENDED DECISION AND ORDER

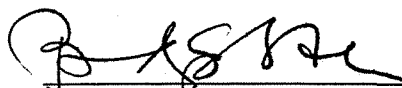
1. There was no mitigating evidence presented to support a reduction of Respondent's civil penalty.

2. Based upon the foregoing, this hearings officer recommends that the civil penalty imposed upon Respondent, pursuant to HRS § 271-27(h) and HAR § 6-62-42 be AFFIRMED.

3. This hearings officer also recommends that the civil penalty of \$2,398.45, imposed upon Respondent by the commission for violations of HRS §§ 271-25 and 271-36 and HAR §§ 6-62-24 and 6-62-42, shall be paid to the commission in cash, or by cashier's check or money order, within 15 days of the commission's final order.

4. In the event that Respondent does not pay its civil penalty in full to the commission within 15 days of the commission's final order, this hearings officer recommends that Respondent's CPCN be suspended or revoked.

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



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

Handivan: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

HANDICABS OF THE PACIFIC, INC.
P.O. Box 22428
Honolulu, HI 96823



Leatrice G. Asahi
Citations Clerk

DATED: MARCH 12, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20246 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

HANDICABS OF THE PACIFIC, INC.
P. O. Box 22428
Honolulu, HI 96823

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



Karen Higashi

DATED: June 20, 2003