

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 HAWAIIAN ISLANDS ECO-TOURS,)
 LTD., dba HIKE OAHU)
)
 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. 02-0276

DECISION AND ORDER NO. 20247

RECEIVED
2003 JUN 20 P 4:17
DEPT. OF CONSUMER AFFAIRS
PUBLIC UTILITIES DIVISION
100 SOUTH KING ST., 2ND FLOOR
HONOLULU, HAWAII 96813

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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 HAWAIIAN ISLANDS ECO-TOURS,) Docket No. 02-0276
 LTD., dba HIKE OAHU)
) Decision and Order No. 20247
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 Respondent's Operating)
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 Suspended or Revoked.)
 _____)

DECISION AND ORDER

I.

On April 4, 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 HAWAIIAN ISLANDS ECO-TOURS, LTD., dba HIKE OAHU (Respondent) on April 4, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On April 23, 2003, Respondent paid the final amount due on the installment plan for the \$632.84¹ 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

¹On November 1, 2002, Respondent filed an amended annual financial report, which reflected a reduced amount of income. As a result, the commission reduced the amount of penalties outstanding from \$751.43 to \$632.84.

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.

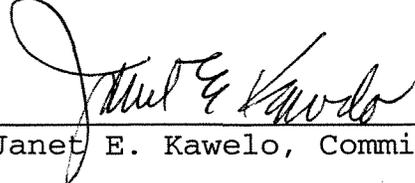
DONE at Honolulu, Hawaii the 20th day of June, 2003.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By 
Janet E. Kawelo, Commissioner


Catherine P. Awakuni
Commission Counsel

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OF THE STATE OF HAWAII

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Suspended or Revoked.)
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DOCKET NO. 02-0276)
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. 19587, filed on September 30, 2002, HAWAIIAN ISLANDS ECO-TOURS, LTD., dba HIKE OAHU, (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 1649-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 its annual financial report and

EXHIBIT A

payment of its annual motor carrier gross revenue fee, pursuant to HAR §§ 6-62-42(a) and 6-62-24(a).¹

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. Marc Dexter, Respondent's president, represented Respondent at the hearing.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 pay penalties associated with its (1) untimely filing of its annual financial report and (2) untimely payment of its annual motor carrier gross revenue fee, in violation of the State of Hawaii 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.

¹HAR § 6-62-42(a) provides that the annual financial report must be filed with the commission by April 30 of each year. HAR § 6-62-24(a) provides that the motor carrier gross revenue fee must be paid to the commission on or before April 30 of each 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.

II.

FINDINGS OF FACT

1. On July 11, 2002, the commission received Respondent's annual motor carrier gross revenue fee and his annual financial report, for the year 2001.³

2. Pursuant to HAR § 6-62-24(a), 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(a), Respondent's annual financial report of his motor carrier operations was due to the commission "by April 30 of [2002]".

4. By commission letter sent on July 11, 2002, Respondent was notified that a penalty of \$1,001.43 for delinquent filing of his annual financial report and late payment of his motor carrier fees was being assessed against him.⁴

5. By letter filed on June 25, 2002, Respondent requested mitigation of the penalties imposed by the commission upon it, and submitted a partial payment of \$250.00.⁵

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

⁴Id.

⁵Id.

6. At the order to show cause hearing, Respondent requested that he be allowed to enter into a payment plan to make full compensation to the commission.⁶

7. By letter filed on November 1, 2002, Respondent proposed a payment plan wherein it would complete payment of its penalties to the commission in four monthly installments.⁷

8. As of the date of this order, Respondent has made two installment payments.⁸

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

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 annual financial report with the commission by April 30 of each year.

⁶Respondent proposed making four monthly payments to satisfy payment of its penalties.

⁷Id. at 3.

⁸Id.

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 gross revenue 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 because Respondent's motor carrier fees and annual financial report were received by the commission after the April 30 deadline, penalties were properly imposed upon Respondent, pursuant to HAR §§ 6-62-42(d) and 6-62-24(b).

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(d) and 6-62-24(b) should be AFFIRMED.

3. This hearings officer also recommends that the civil penalty imposed upon Respondent by the commission shall be paid to the commission in cash, or by cashier's check or money order.

4. In the event that Respondent has not completed its last two installment payments 30 days after the commission's final order is filed, this hearings officer recommends that Respondent's CPCN be suspended or revoked.

DATED: Honolulu, Hawaii this 4th day of April, 2003.


Benedyne S. Stone
Hearings Officer
Public Utilities Commission

Hawaiian island eco: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

HAWAIIAN ISLANDS ECO-TOURS, LTD.
dba HIKE OAHU
Marc Dexter, President
44-099 Keeaalau Place
Kaneohe, HI 96744

Leatrice G. Asahi

Leatrice G. Asahi
Clerk

DATED: April 4, 2003

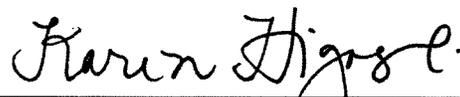
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

HAWAIIAN ISLANDS ECO-TOURS, LTD., dba HIKE OAHU
44-099 Keaalau Place
Kaneohe, HI 96744

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



Karen Higashi

DATED: June 20, 2003