

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
JOVENAL A. DULATRE, dba JAYDE)
TOUR & LIMOUSINE SERVICE)
)
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. 02-0280

DECISION AND ORDER NO. 20248

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

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DIV. OF CONSUMER AFFAIRS
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Docket No. 02-0280
Decision and Order No. 20248

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 JOVENAL A. DULATRE, dba JAYDE TOUR & LIMOUSINE SERVICE (Respondent) on April 4, 2003, via first class mail. Respondent did not file written exceptions to the recommended decision.

On January 6, 2003, Respondent paid the final amount due on the installment plan for the \$251.42 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:

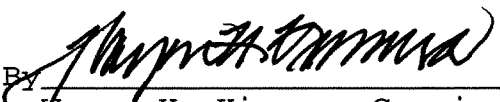
1. The recommended decision regarding, except as modified herein and attached hereto as Exhibit A, is adopted as the commission's final decision and order in this matter.

2. This docket is closed.

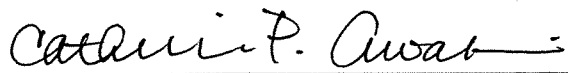
DONE at Honolulu, Hawaii the 20th day of June, 2003.

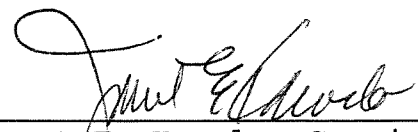
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

By 
Janet E. Kawelo, Commissioner

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)		
)	
JOVENAL A. DULATRE, dba)	DOCKET NO. 02-0280
JAYDE TOUR & LIMOUSINE SERVICE)	
)	FINDINGS OF FACT
Notice of Failure to Comply)	CONCLUSIONS OF LAW, AND
With Hawaii Revised Statutes)	RECOMMENDED DECISION
and Commission's Regulations)	AND ORDER OF HEARINGS
Order to Show Cause Why)	OFFICER
Respondent's Operating)	
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. 19591, filed on September 30, 2002, JOVENAL A. DULATRE, dba JAYDE TOUR & LIMOUSINE SERVICE (Respondent), was ordered to appear before the commission on October 29, 2002, at 9:00 a.m. to explain why Respondent's certificate of public convenience and necessity (CPCN) number 1032-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 carrier

EXHIBIT A

gross revenue fee (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. Respondent represented himself 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 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.

¹HAR § 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.

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 June 12, 2002, the commission received Respondent's Fee and AFR for the year 2001.³

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

4. On June 12, 2002, by commission letter, Respondent was notified that a penalty of \$251.42 for delinquent filing of his annual financial report and late payment of his motor carrier fees was being assessed against him.⁴

5. Respondent notified the commission on October 16, 2002 that he would contest the penalty.⁵

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

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

⁴Id.

⁵Id.

⁶By letter filed on November 4, 2002, Respondent proposed making three payments of \$83.81 each, beginning November 5, 2002.

7. On January 6, 2003, Respondent completed payment of his penalty to the commission.⁷

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.

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 Respondent has made full payment to the commission of the penalties imposed upon him pursuant to HRS § 271-27(h) and HAR §§ 6-62-42(d) and 6-62-24(b) and has

⁷Id. at 3.

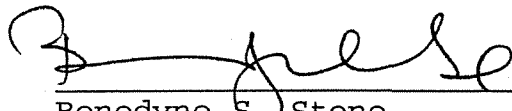
fully complied with the State motor carrier laws, rules and regulations.

IV.

RECOMMENDED DECISION AND ORDER

Based on the foregoing, this hearings officer recommends that Order No. 19591, filed on September 30, 2002, should be VACATED and that this docket should be closed.

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



Benedyne S. Stone
Hearings Officer
Public Utilities Commission

Dlatre: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

JOVENAL A. DULATRE dba
JAYDE TOUR & LIMOUSINE SERVICE
45-419 Pua Makahala Street
Kaneohe, Hawaii 96744



Leatrice G. Asahi
Clerk

DATED: April 4, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 20248 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

JOVENAL A. DULATRE, dba JAYDE TOUR & LIMOUSINE SERVICE
45-419 Pua Makahala Street
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