

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Request of )  
 )  
S. BRUCE BERGER, dba )  
IN-RECOVERY SERVICES ) DOCKET NO. 03-0361  
 )  
To Reactivate Motor Carrier )  
Certificate No. 4846-C )  
 )  

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In the Matter of the Application of )  
 )  
S. BRUCE BERGER, dba )  
IN-RECOVERY SERVICES ) DOCKET NO. 04-0273  
 )  
To Sell, Lease, Assign, Mortgage or ) (CONSOLIDATED)  
Otherwise Dispose of, or Encumber )  
The Whole or Any Part of Its )  
Property, Certificate, or Permit. )  

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DECISION AND ORDER NO. 21576

Filed Jan. 31, 2005  
At 1:30 o'clock P .M.

Harun Dignost.  
Chief Clerk of the Commission

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

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DECISION AND ORDER

I.

Application

On September 13, 2004, S. BRUCE BERGER, dba IN-RECOVERY SERVICES ("Petitioner"), filed a letter requesting that the inactive status of his certificate of public convenience and necessity no. 4846-C ("Certificate No. 4846-C") be extended for an additional year.<sup>1</sup> By Order No. 21400, filed on October 7, 2004, in Docket No. 03-0361, Certificate No. 4846-C was placed on inactive status for an additional one (1)-year period, until November 4, 2005.

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<sup>1</sup>Hawaii Revised Statutes ("HRS") § 271-19 provides that the commission may grant inactive status for a cumulative period not to exceed two years over the life of the certificate.

On September 13, 2004, Petitioner also filed an application in Docket No. 04-0273 seeking commission approval to transfer Certificate No. 4846-C to PLATINUM MANAGEMENT LLC, dba THE LIMO COMPANY ("Transferee"), pursuant to HRS § 271-18. Under Certificate No. 4846-C, and pursuant to HRS § 271-12, Petitioner is authorized to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Maui in the 1-to-7 passenger classification. Petitioner's application included a request that the commission reactivate Certificate No. 4846-C in conjunction with and at the time of transfer of Certificate No. 4846-C to Transferee.

Petitioner served copies of the application on the Hawaii Transportation Association, which consists of carriers that may be affected by the proposed transfer, and on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). By a statement filed on September 15, 2004, the Consumer Advocate indicated that it will not participate in this proceeding.

Motions to intervene ("Motions to Intervene") were timely filed by KATHERINE BARR, dba TOWN & COUNTRY LIMOUSINE, TEMPTATION TOURS, INC., and WAILEA LIMOUSINE, INC. (collectively "Movants") on October 22, 25, and 26, 2004, respectively. On November 1, 2004, Transferee timely filed a response to the Motions to Intervene. On November 8, 2004, Petitioner filed a motion for enlargement of time ("Motion for Enlargement of Time") to file a memorandum in opposition to Movants' Motions to Intervene ("Memorandum in Opposition"). On that same day, Petitioner also filed its

Memorandum in Opposition. By Order No. 21517, filed on December 23, 2004, the commission denied (1) Petitioner's Motion for Enlargement of Time, filed on November 8, 2004, and (2) Movants' Motions to Intervene, filed on October 22, 25, and 26, 2004.

## II.

### Consolidation

Hawaii Administrative Rules ("HAR") § 6-61-39 provides that the commission, upon its own initiative, may consolidate two or more proceedings that involve related questions of fact or law if it finds that the consolidation will be conducive to the proper dispatch of its business and to the ends of justice, and will not unduly delay the proceedings.

Upon review of the record, we find that Docket Nos. 03-0361 and 04-0273 involve related questions of fact and law. We also find that the consolidation of these proceedings will be conducive to the proper dispatch of the commission's business and the ends of justice, and will not unduly delay these proceedings.

Based on the foregoing, we conclude that Docket Nos. 03-0361 and 04-273 should be consolidated.

III.

Findings and Conclusions

At the outset, we find that there is good cause to grant Petitioner's request to reactivate Certificate No. 4846-C, pursuant to HRS § 271-19.

Petitioner also seeks commission approval to transfer Certificate No. 4846-C to transferee, pursuant to HRS § 271-18. Upon review of Petitioner's application, the commission finds that the proposed transfer of Certificate No. 4846-C is just and reasonable and will be consistent with the public interest. The commission also finds that Transferee is fit, willing, and able to perform the services previously performed by Petitioner. The commission, thus, finds that there is good cause to grant Petitioner's request and concludes that the proposed transfer is in accordance with HRS § 271-18, and should, therefore, be approved.

IV.

Orders

THE COMMISSION ORDERS:

1. Docket Nos. 03-0361 and 04-0273 are consolidated, pursuant to HAR § 6-61-39.
2. Certificate No. 4846-C is reactivated, effective from the date of this order.
3. Petitioner's application to transfer Certificate No. 4846-C to Transferee is approved.

4. Petitioner shall surrender Certificate No. 4846-C and an amended certificate reflecting the authority granted by this decision and order shall be issued to Transferee.

5. Transferee shall comply with all of the commission's requirements for common carriers by motor vehicle including, but not limited to, filing the appropriate insurance documents and paying a fee of \$20 for motor carrier gross revenues.

6. Petitioner and Transferee shall comply with the requirements set forth herein within 120 days after service of this decision and order. Failure to comply within the time specified constitutes cause for the commission to void this decision and order.

7. Transferee shall not commence operations under this decision and order until it has received written confirmation from the commission that all requirements have been met.

DONE at Honolulu, Hawaii JAN 31 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By Wayne H. Kimura  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone  
Benedyne S. Stone  
Commission Counsel

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

03-0361  
04-0273.rpr

03-0361  
04-0273

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21576 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

S. BRUCE BERGER LLC, dba IN-RECOVERY SERVICES  
1750 Kalakaua Avenue, #3728  
Honolulu, HI 96826

PLATINUM MANAGEMENT LLC, dba THE LIMO COMPANY  
c/o ALEX ANTONIO  
P. O. Box 959, PMB #530  
Kihei, HI 96753

  
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Karen Higashi

DATED: **JAN 31 2005**