

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
AIKANE INTERPACIFIC CORPORATION)
dba MAIKAI OHANA TOURS)
)
For a Motor Carrier Certificate)
Or Permit.)
_____)

DOCKET NO. 05-0095

ORDER NO. 21893

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

Filed June 24, 2005
At 3:15 o'clock P .M.

Karen Higashi
Chief Clerk of the Commission

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

K. Higashi

On April 21, 2005,, the Consumer Advocate informed the commission that it will not be participating in this docket.

On June 7, 2005, ("Movant") filed a motion to intervene in the instant docket ("Motion to Intervene"). In the Motion to Intervene, Movant also requested that the commission grant it a hearing so that it may present oral argument on the Motion to Intervene.¹

On June 23, 2005, Applicant filed a motion for enlargement of time to reply to the Motion to Intervene ("Motion for Enlargement of Time") along with a reply to the Motion to Intervene ("Reply").

II.

Discussion

The certificate of service attached to Applicant's Motion for Enlargement of Time certifies that it served its Motion for Enlargement Time on June 23, 2005. Pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-21(e), 6-61-22 and 6-61-41(c), to be considered timely, Applicant must serve and file its opposition to the Motion to Intervene by June 17, 2005.

Pursuant to HAR § 6-61-23(a)(2), the commission, upon a motion made after the expiration of the specified period, may, at its discretion, enlarge a prescribed period of time "where the

¹By Notice of Hearing, dated June 14, 2005, the commission gave notice to Applicant and Movant that oral argument on the Motion to Intervene would be heard by the commission on June 28, 2005, at 1:00 p.m. in the commission's hearing room.

failure to act was the result of excusable neglect". Thus, because the Motion for Enlargement of Time was filed after the period specified in HAR § 6-61-41, in order to exercise its discretion to enlarge the period under HAR § 6-61-23(a)(2), the commission must first find that Applicant's failure to act within the required time constitutes excusable neglect.

In Order No. 17942, filed on August 2, 2000, in Docket No. 00-0017 (*In re Laie Water Company, Inc.*) ("*Laie*"), the commission stated that ignorance of the rules governing the practice and procedure before the commission, or mistakes construing such rules do not constitute excusable neglect.² In Order No. 18114, filed on October 4, 2000, in Docket No. 00-0063 (*In re Soltur, Inc.*) ("*Soltur*"), the commission denied the enlargement of time request of a movant who claimed that its failure to act was due to a substitution of counsel.³ The commission found that the facts and circumstances of *Laie* and *Soltur* did not constitute excusable neglect under HAR § 6 61-23(a)(2).

In its Motion for Enlargement of Time, Applicant asserts that the delay in filing its opposition to the Motion to Intervene was a result of excusable neglect because Applicant has acted "as expeditiously as possible under the circumstances".⁴ Applicant asserts that it contacted potential legal counsel on

²See *Laie* at 4.

³See *Soltur* at 2-3.

⁴Motion for Enlargement of Time at 2.

June 21, 2005, securing representation the next day, June 22, 2005. Applicant further asserts that since June 22, 2005, Applicant's legal counsel has acted swiftly in its efforts to file the Motion for Enlargement of Time and accompanying Reply.

Based on the above, we find that the reasons stated in Applicant's Motion for Enlargement of Time do not rise to the level of excusable neglect. Applicant's delay in obtaining counsel does not rise to the level of "excusable neglect". In its Motion for Enlargement of Time, Applicant does not state the reason for its delay in seeking legal counsel, however, notwithstanding this, even a claim of ignorance of the rules governing the practice and procedure before the commission or mistakes construing such rules is not "excusable neglect." Enos v. Pacific Transfer & Warehouse Inc., 80 Hawai'i 345, 351-54, 910 P.2d 116, 122-25 (1996). We, therefore, conclude that Applicant's Motion for Enlargement of Time should be denied, and that Applicant's Reply, filed on June 23, 2005, will not be considered in the commission's ruling on Movant's Motion to Intervene, filed on June 7, 2005.

The commission notes, however, that its denial of Applicant's Motion for Enlargement of Time under HAR § 6-61-23 does not preclude Applicant from presenting oral argument on Movant's Motion to Intervene at the commission hearing scheduled for June 28, 2005. The commission's denial of Applicant's Motion for Enlargement of Time applies only to the submission by Applicant of "counter affidavits and a written statement of reasons in opposition" to Movant's Motion to Intervene, i.e., Applicant's Reply. HAR § 6-61-41(c). Thus, Applicant may still be

a full participant at the oral argument scheduled on the Motion to Intervene.⁵

III.

THE COMMISSION ORDERS:

1. Applicant's Motion for Enlargement of Time, filed on June 23, 2005, is denied.

DONE at Honolulu, Hawaii JUN 24 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:

By (EXCUSED)
Janet E. Kawelo, Commissioner

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

05-0095.rpr

⁵Subject to any limitations which may be imposed by the chairman of the commission at the hearing on the Motion to Intervene.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21893 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JUN 24 2005