

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
POLYNESIAN ADVENTURE TOURS, INC.)
For Temporary Common Carrier)
Authority.)
_____)

DOCKET NO. 05-0207

ORDER NO. 22076

Filed Oct. 14, 2005
At 11 o'clock A.M.

Karen Higashi.
Chief Clerk of the Commission

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

2005 OCT 17 A 8:30

RECEIVED

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

In the Matter of the Application of))	
POLYNESIAN ADVENTURE TOURS, INC.))	Docket No. 05-0207
For Temporary Common Carrier))	Order No. 22076
Authority.))	
<hr/>		

ORDER

By this Order, the commission dismisses as untimely POLYNESIAN ADVENTURE TOURS, INC.'s ("Applicant") motion for reconsideration of Order No. 22049 ("Motion for Reconsideration"), filed on October 6, 2005, in the matter of Applicant's application for temporary motor carrier authority ("Application").

I.

Background

By Order No. 22049, filed on September 23, 2005, ("Order No. 22049") the commission denied Applicant's Application, filed on August 16, 2005, for temporary motor carrier authority. On October 6, 2005, Applicant filed a Motion for Reconsideration of Order No. 22049, pursuant to HAR §§ 6-61-137, 6-61-21 and 6-61-22.

II.

Discussion

To be considered timely, a motion for reconsideration must be filed within ten (10) days after a decision or order in

question is served upon a party. HAR § 6-61-137. In addition, HAR § 6-61-21(d) provides:

"Service upon a party, other than the commission, **shall be deemed** complete upon the occurrence of **at least one of the following**:

- (1) The party or its attorney is personally served;
- (2) The document is delivered to the party's office or its attorney's office and left with some responsible person; or
- (3) The document is **properly stamped, addressed, and mailed** to the last known address of the party on file with the commission or to its attorney."

(Emphasis added.)

Order No. 22049 was served upon Applicant on September 23, 2005, by mail as provided for in HAR § 6-61-21(d)(3), as it was filed, and stamped, addressed, and mailed to Applicant's last known address on September 23, 2005. Consequently, in accordance with HAR § 6-61-21(d)(3), service was completed on September 23, 2005, and pursuant to HAR §§ 6-61-137, 6-61-22 and 6-61-21(e), Applicant had until October 5, 2005 to file its Motion for Reconsideration, which is ten (10) days, plus two (2) days, from September 23, 2005.¹

In its Motion for Reconsideration, Applicant erroneously states that Order No. 22049 "was served on Applicant, via first-class mail postage pre-paid, and received in the mail on

¹HAR § 6-61-137 provides, in relevant part, that a motion for reconsideration shall be filed "within ten days after the decision or order is served upon the party". HAR § 6-61-22 provides, in relevant part, that Saturdays, Sundays and holidays are included in the computation of time when the prescribed time is more than seven (7) days, and HAR § 6-61-21(e) provides, in relevant part, that two (2) days shall be added to a prescribed period of time when a party is served by mail.

Monday, September 26, 2005".² As noted above, Order No. 22049 was served upon Applicant on September 23, 2005.

Based upon the discussion above, to be timely, Applicant's Motion for Reconsideration should have been filed with the commission by October 5, 2005. Applicant's Motion for Reconsideration was filed with the commission on October 6, 2005. We, thus, find that Applicant's Motion for Reconsideration was untimely, and conclude that the Motion for Reconsideration should be dismissed.

III.

Order

THE COMMISSION ORDERS that Applicant's Motion for Reconsideration of Order No. 22049 is dismissed as untimely.

DONE at Honolulu, Hawaii OCT 14 2005.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By (Excused)
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

05-0207.rpr

²Motion for Reconsideration at 3.

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22076 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

POLYNESIAN ADVENTURE TOURS, INC.
ATTENTION: JONATHAN SAVITZ, PRESIDENT
1049 Kikowaena Place
Honolulu, HI 96819

WRAY H. KONDO, ESQ.
EMI L.M. KAIMULOA, ESQ.
CHRISTOPHER J. BENNETT, ESQ.
WATANABE ING KAWASHIMA & KOMEIJI LLP
First Hawaiian Center
999 Bishop Street, 23rd Floor
Honolulu, HI 96813



Karen Higashi

DATED: OCT 14 2005