

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

-----In the Matter of-----)
)
AKINA ALOHA TOURS, INC., a Hawaii)
corporation, and AKINA BUS SERVICE,))
LTD., a Hawaii corporation,)
Complainants,)
)
vs.)
)
ROBERT'S HAWAII, INC., a Hawaii)
corporation, and ROBERT'S TOURS AND)
TRANSPORTATION, INC., a Hawaii)
corporation,)
Respondents.)
_____)

DOCKET NO. 03-0397

ORDER NO. 22489

Filed May 26, 2006
At 1 o'clock P.M.

Karen H. Grosz
Chief Clerk of the Commission

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

K. H. Grosz

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Respondents.)
_____)

Docket No. 03-0397

Order No. 22489

ORDER

By this Order, the commission denies the motions for reconsideration of Decision and Order No. 22211 filed by ROBERT'S HAWAII, INC. and ROBERT'S TOURS & TRANSPORTATION, INC. (collectively, "Robert's") and by AKINA ALOHA TOURS, INC. and AKINA BUS SERVICE, LTD. (collectively, "Akina").¹

I.

Introduction

The commission, in Decision and Order No. 22211, issued on January 9, 2006, adopted as its final decision, the Findings

¹Motion for Reconsideration of Decision and Order No. 22211; Memorandum in Support of Motion; Exhibit Nos. 4 to 9 and HE 2 to 3; and Certificate of Service (collectively, "Robert's Motion for Reconsideration"), filed on January 23, 2006. [Akina's] Motion for Reconsideration or Rehearing; Certificate of Service (collectively, "Akina's Motion for Reconsideration"), filed on January 23, 2006. Robert's and Akina served copies of their respective Motions for Reconsideration upon each other and the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate").

of Fact, Conclusions of Law, and Recommended Decision ("Recommended Decision") issued by the hearings officer appointed for the instant proceeding. Decision and Order No. 22211 at 10.

Robert's, by its Motion for Reconsideration, seeks reconsideration of Decision and Order No. 22211, pursuant to Hawaii Administrative Rules ("HAR") §§ 6-61-41 and 6-61-137.

On February 7, 2006, Akina filed an opposition to Robert's Motion for Reconsideration, pursuant to HAR §§ 6-61-41 and 6-61-140, alleging that Robert's Motion for Reconsideration simply restates the same argument previously filed in its exceptions to the recommended decision.²

Akina filed its Motion for Reconsideration, pursuant to HAR §§ 6-61-41 and 6-61-137, asserting that the provision of Decision and Order No. 22211 that agrees that there was sufficient mitigating evidence justifying the hearings officer's failure to impose a civil penalty upon Robert's, and provides Robert's with a period of time in which to seek regular route authority is "unreasonable, unlawful and/or erroneous." Akina's Motion for Reconsideration at 1.

Robert's filed an opposition to Akina's Motion for Reconsideration on February 1, 2006, pursuant to HAR §§ 6-61-41 and 6-61-140.³ In its Opposition, Robert's reiterates that it

²[Akina's] Memorandum in Opposition to [Robert's Motion for Reconsideration] ("Akina's Opposition"), filed on February 7, 2006, at 1.

³Robert's Memorandum in Opposition to [Akina's Motion for Reconsideration]; Exhibits 10 and 11; and Certificate of Service (collectively, "Robert's Opposition"), filed on February 1, 2006.

operated its Employee Shuttle in good faith, and requests that Akina's Motion for Reconsideration be denied.⁴

II.

Discussion

HAR § 6-61-137 provides:

Motion for reconsideration or rehearing. A motion seeking any change in a decision, order, or requirement of the commission should clearly specify whether the prayer is for reconsideration, rehearing, further hearing, or modification, suspension, vacation, or a combination thereof. The motion shall . . . set[] forth specifically the grounds on which the movant considers the decision or order unreasonable, unlawful, or erroneous.

HAR § 6-61-137. Thus, to succeed on a motion for reconsideration, the movant must demonstrate that the commission's decision or order was "unreasonable, unlawful, or erroneous." See id.

"[T]he purpose of a motion for reconsideration is to allow the parties to present new evidence and/or arguments that could not have been presented during the earlier adjudicated motion." Tagupa v. Tagupa, 108 Hawai'i 459, 465, 121 P.2d 924, 930 (2005). "Reconsideration is not a device to relitigate old matters or to raise arguments or evidence that could and should have been brought during the earlier proceeding." Id. (citing

⁴In its formal complaint, filed on November 21, 2003, Akina alleged that Robert's is operating a regular route service, known as the "Employee Shuttle," beyond the scope of its authority as permitted by the commission, and in violation of Hawaii Revised Statutes ("HRS") §§ 271-8, 271-12, and 271-27.

Ass'n of Apartment Owners of Wailea Elua v. Wailea Resort Co., 100 Hawai'i 97, 110, 58 P.3d 608, 621 (2002) and quoting Sousaris v. Miller, 92 Hawai'i 505, 513, 993 P.2d 539, 547 (2000)).

HAR § 6-61-138(a) states that the "filing of a motion for reconsideration or rehearing shall not stay a commission decision and order."

A.

Robert's Motion for Reconsideration

Robert's asserts that the commission's decision to adopt the Recommended Decision is "clearly erroneous because it was not based on facts in evidence." Robert's Motion for Reconsideration at 2. In support of its Motion for Reconsideration, Robert's again contends that: 1) its Employee Shuttle, the services at the heart of this complaint proceeding, is merely a "drop-off" service; and 2) its "unpublished and unestablished schedule" does not support the commission's decision. Id. at 2, 5.

In the alternative, Robert's requests additional time, until June 30, 2006, to temporarily operate so it may comply with a federal requirement that regular route vehicles be equipped with a wheel chair lift, and since on July 1, 2006 it will be the service provider for the County of Maui's Public Transit System.

As noted by Akina in its Opposition, Robert's Motion for Reconsideration merely restates its exceptions to the Recommended Decision, arguing that the same errors made by the hearings officer are also made by the commission in Decision and Order No. 22211. The facts and reasons alleged by Robert's warranting reconsideration were previously reviewed by the commission when it issued Decision and Order No. 22211. The commission remains unconvinced, based upon the arguments made by Robert's in its Motion for Reconsideration, that Decision and Order No. 22211 is unreasonable, unlawful, or erroneous. Based on the foregoing, the commission denies Robert's Motion for Reconsideration.

Robert's request for additional time to operate, and the reasons therefore, however, are included for the first time in its Motion for Reconsideration. Decision and Order No. 22211, which, pursuant to HAR § 6-61-138, was not stayed by Robert's Motion for Reconsideration, provided Robert's with adequate time in which to apply for regular route authority. Accordingly, Robert's request for additional time to operate the Employee Shuttle is denied. Robert's shall immediately cease and desist the operation of the Employee Shuttle.

B.

Akina's Motion for Reconsideration

Akina moves the commission to grant a reconsideration and rehearing of the portions of Decision and Order No. 22211 that: 1) adopts the hearings officer's recommendation that the commission temporarily authorize Robert's to operate the Employee Shuttle for no more than ninety days; and 2) states:

The commission agrees that the facts set forth in Conclusion of Law Number 4, including the receipt of a non-binding, informal staff opinion on the matter, constitute mitigating evidence justifying the hearings officer's failure to impose a civil penalty upon Robert's. Moreover, the commission believes that the public interest requires that Robert's be given a period of time in which to seek authority to provide such service.

Decision and Order No. 22211 at 10. Akina files its Motion for Reconsideration on the grounds that these portions of Decision and Order No. 22211 are unreasonable, unlawful, or erroneous. Akina requests that the commission assess Robert's a civil penalty for violating HRS §§ 271-8 and 271-12, and that Robert's be ordered to immediately cease and desist the operation of the Employee Shuttle.

In support of its Motion for Reconsideration, Akina again asserts that Robert's operated the Employee Shuttle in bad faith, and argues that the commission "should protect Akina by ordering Robert's to cease and desist operating the Employee Shuttle, since it is being operated in violation of the law, and since the only fair and equitable disposition in this matter is to make such an order." Akina's Motion for Reconsideration at 6.

Akina similarly offers no new arguments for the commission's consideration of this matter, since Akina adequately explained its concerns in its written exceptions to the Recommended Decision. The facts and law argued by Akina in its Motion for Reconsideration were considered by the commission in rendering the decision set forth in Decision and Order No. 22211. Upon a review of Akina's Motion for Reconsideration, the commission is not persuaded that Decision and Order No. 22211 was unreasonable, unlawful, or erroneous. Based on the foregoing, the commission denies Akina's Motion for Reconsideration.

III.

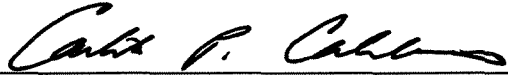
Orders

THE COMMISSION ORDERS:


1. Robert's Motion for Reconsideration, filed on January 23, 2006, is denied.
2. Robert's alternative request for additional time to temporarily operate its Employee Shuttle, until June 30, 2006, is denied. Robert's shall immediately cease and desist the operation of its Employee Shuttle.
3. Akina's Motion for Reconsideration, filed on January 23, 2006, is denied.

DONE at Honolulu, Hawaii MAY 26 2006.

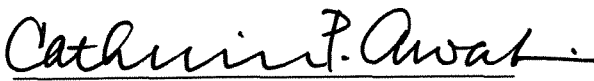
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

03-0397.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 22489 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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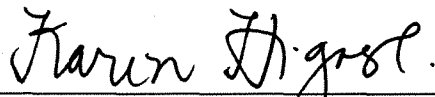
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Karen Higashi

DATED: MAY 26 2006