

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
 MAUI OFF-ROAD AND SHORELINE)
 FISHING TOURS, INC.)
)
 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. 2006-0246

ORDER NO. 23260

Filed Feb. 15, 2007
At 11 o'clock A .M.

Karen Higuel.
Chief Clerk of the Commission

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

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Docket No. 2006-0246
Order No. 23260

ORDER

By this Order, the commission denies the motion for enlargement of time filed by MAUI OFF-ROAD AND SHORELINE FISHING TOURS, INC. ("Movant"), on January 8, 2007, and thus, dismisses Movant's motion for reconsideration, which was also filed on January 8, 2007, as untimely.

I.

Background

By Order No. 22681, filed on August 3, 2006, the commission ordered Movant to appear at 465 South King Street, Room B3, Honolulu, Hawaii 96813, at 9:00 a.m., on September 27, 2006, to show cause why Movant's Certificate No. 4830-C should not be suspended or revoked for failure to file an annual financial report ("AFR") and pay an annual motor carrier gross revenue fee ("Fee") for the year 2005, pursuant to Hawaii Revised

Statutes ("HRS") §§ 271-25, 271-36, and Hawaii Administrative Rules ("HAR") §§ 6-62-42(a), 6-62-24(a).¹ As Movant failed to appear at the hearing, the commission revoked Movant's Certificate No. 4830-C by Decision and Order No. 23032, filed on November 21, 2006.

On January 8, 2007, Movant filed a motion for reconsideration of Decision and Order No. 23032 and a motion for enlargement of time to file its motion for reconsideration, as the motion for reconsideration was untimely.² In addition, on January 8, 2007, Movant filed its 2005 AFR and paid its Fee. On January 22, 2007, Movant paid \$56.63 in penalties and interest that the commission assessed, pursuant to HRS § 271-27(i) and HAR §§ 6-62-24(b)(c) and 6-62-42(d).

II.

Discussion

HAR § 6-61-23(a)(2), which governs requests for enlargement of time, states in relevant part:

¹The commission notified Movant of the September 27, 2006 hearing by serving Order No. 22681 upon Movant by certified mail, return receipt requested, at Movant's last known address. Pursuant to HAR § 6-61-21, service is deemed complete upon properly stamping, addressing, and mailing the order to Movant's last known address, or to Movant's attorney. Additionally, pursuant to HRS § 91-9.5, the commission provided Movant with notice of hearing via statewide publication in newspapers of general circulation on September 5 and September 12, 2006.

²HRS § 271-32(b) and HAR § 6-61-137 provide that a motion for reconsideration must be filed within ten (10) days of service of the decision and order. HAR § 6-61-21(e) allows for an additional two days when service is effected by mail. Thus, in this instance, Movant's motion for reconsideration should have been filed on or before December 4, 2006.

- (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

- (2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect

HAR § 6-61-23(a)(2). Thus, section 6-61-23(a)(2) allows Respondent to file a motion for reconsideration only upon a showing of excusable neglect.

In its motion for an enlargement of time, Movant asserts that its delay in filing its motion for reconsideration was the result of excusable neglect because Movant did not receive the commission's notice to appear, Order No. 22681, nor the commission's Decision and Order No. 23032, which revoked Certificate No. 4830-C. Movant states that it had trouble with its mail service due to mail theft for most of 2005 and as a result changed its mailing address. HRS § 271-26.5, however, provides that a certificate holder shall report any change of address to the commission within five (5) business days from such change and provides that all communications, correspondence and service of orders shall be made upon the certificate holder at the last recorded address on file with the commission. Decision and Order No. 23032 was properly served upon Movant on November 21, 2006, by United States mail, postage prepaid, and addressed to the last known address of Movant on file with the commission, pursuant to HRS § 271-26.5 and HAR § 6-61-21. The commission, thus, finds that Movant's explanation for requesting

an enlargement of time does not amount to excusable neglect. We, therefore, conclude that Movant's motion for enlargement of time should be denied. Accordingly, since Movant failed to timely file its motion for reconsideration pursuant to HRS § 271-32(b) and HAR § 6-61-137, we conclude that Movant's motion for reconsideration should be dismissed.

III.

Orders

THE COMMISSION ORDERS:

1. Movant's motion for enlargement of time, filed on January 8, 2007, is denied.
2. Movant's motion for reconsideration, filed on January 8, 2007, is dismissed as untimely.

DONE at Honolulu, Hawaii FEB 15 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou
Stacey Kawasaki Djou
Commission Counsel

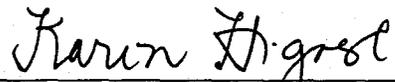
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CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23260 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
P. O. Box 541
Honolulu, HI 96809

DAVID M. BLOCH
PRESIDENT
MAUI OFF-ROAD AND SHORELINE FISHING TOURS, INC.
P. O. Box 162
Kula, HI 96790



Karen Higashi

DATED: FEB 15 2007