

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

----- In the Matter of -----)
)
MERL P. CABRADILLA, dba)
MPC HANDITRANS SVCS.)
)
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. 2006-0230

ORDER DISMISSING THE EX PARTE MOTION OF
MERL P. CABRADILLA FILED ON OCTOBER 17, 2008

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

Public Utilities Commission

DEC 31 2008

FILED

("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. 1801-C by Decision and Order No. 23019, filed on November 3, 2006.

On October 17, 2008, Movant filed this Motion requesting reconsideration of Decision and Order No. 23019. HAR § 6-61-137, however, requires that a reconsideration motion be filed within ten days of service of the decision and order. Decision and Order No. 23019 was served on Movant by mail on November 3, 2006. Accordingly, the Motion is untimely unless the commission grants an extension of time under HAR § 6-61-23.²

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. 22699 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 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 November 15, 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 for an enlargement of time only upon a showing of excusable neglect.

In his Motion, Movant indicates that the delay in filing his motion for reconsideration was because Movant did not receive the commission's notice to appear,³ Order No. 22699, nor the commission's Decision and Order No. 23019, which revoked Certificate No. 1801-C. Movant states that the orders were sent to a prior address and that he sold the property at the prior address in September 2004. Therefore, on August 7, 2006, when the orders were mailed, Movant was not living at said address.⁴

HRS § 271-26.5, however, requires a certificate holder to report any change of address to the commission within five 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. Order No. 22699 and Decision and Order No. 23019 were both properly served upon Movant, 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

³Motion, at 3.

⁴Motion, at 3.

and HAR § 6-61-21. The commission, thus, finds that an enlargement of time to file a motion for reconsideration is unwarranted, as there is no showing of excusable neglect. Accordingly, since Movant failed to timely file its motion for reconsideration pursuant to HRS § 271-32(b) and HAR § 6-61-137, the commission concludes that Movant's motion for reconsideration should be dismissed.

III.

Order

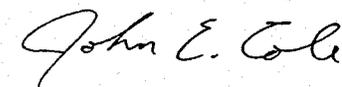
THE COMMISSION ORDERS:

Movant's Motion, filed on October 17, 2008, is dismissed as untimely.

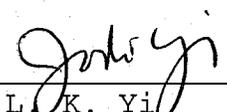
DONE at Honolulu, Hawaii DEC 31 2008.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Yi
Commission Counsel

By: 
Leslie H. Kondo, Commissioner

2006-0230.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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