

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Petition of)

GALAXY TOUR, INC.)

DOCKET NO. 2008-0034

For a Declaratory Ruling)
Regarding Section 271-36, Hawaii)
Revised Statutes.)
_____)

ORDER NO. 24092

Filed March 14, 2008

At 9 o'clock A.M.

Karen Higashi

Chief Clerk of the Commission

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

ATTEST: A True Copy

KAREN HIGASHI

Chief Clerk, Public Utilities
Commission, State of Hawaii

K. Higashi

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GALAXY TOUR, INC.)
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By this Order, the commission dismisses, without prejudice, the petition for declaratory ruling regarding Hawaii Revised Statutes ("HRS") § 271-36 filed by GALAXY TOUR, INC. ("Petitioner") on February 13, 2008.¹

On February 13, 2008, Petitioner filed a petition ("Petition") requesting that the commission issue a declaratory order that HRS § 271-36, regarding the annual fees paid to the commission on gross revenues received for its services connected with or incident to the transportation of persons, shall not include revenues received by Petitioner for arranging the accommodations, meals, and inter-island air travel for its China group packages for which ordinary transportation costs are

¹The DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate") is an ex-officio party to all proceedings before the commission. See HRS § 269-51; Hawaii Administrative Rules ("HAR") § 6-61-62.

neither charged to the traveler nor the governmental travel organizations contracting Petitioner's services.

Petitioner states or alleges the following in its Petition:

1. Petitioner holds a commission issued certificate of public convenience and necessity, issued on June 22, 1998, authorizing it to transport passengers by motor vehicle on the island of Oahu in the 8-25 passenger classification, limited to utilizing motor vehicles with a maximum manufacturer's seating capacity of 15 passengers.

2. Petitioner was issued Citation No. 1256 on December 28, 2007, and fined \$47,231.73 for the violation of HRS § 271-36 (regarding annual fees) and HAR § 6-62-26 (concerning requests for information).

3. Petitioner's request for a hearing regarding Citation No. 1256 was denied by commission letter dated January 29, 2008, since its request was untimely filed.

4. While no breakdown of the assessed fine was provided, Petitioner believes that: (a) the assessment of the fine for unpaid fees is based on the gross income amount set forth on its tax returns submitted to the commission's enforcement staff in response to issued information requests; and (b) it would continue to be unfairly assessed fees on its revenues, not connected with nor incidental to the transportation of passengers by motor vehicles, unless this issue is addressed by the commission.

5. Petitioner contends that: (a) HRS § 271-36 does not require the payment of transportation revenue fees for income received as a travel agency in arranging hotel accommodations and meals for group tour packages for which ordinary ground transportation is not charged; (b) Citation No. 1256 was defective since it failed to provide sufficient notice of the violation alleged and failed to provide any description or breakdown of the fines Petitioner was assessed; and (c) the fees were unfairly assessed on revenues not connected with or incidental to the transportation of persons and requests that the \$47,231.73 amount be reduced or vacated to only reflect the fees for the transportation revenues received by Petitioner, and/or in the alternative, a hearing to submit evidence in support its position.

Based on the above, Petitioner requests that the commission issue a declaratory order setting forth that:

1. The transportation revenues on which fees are required to be assessed or paid, pursuant to HRS § 271-36, does not include other revenues from Petitioner's travel agency business related to arranging accommodations and meals for travelers on group travel packages.

2. Citation No. 1256 was defectively issued since it failed to provide sufficient notice of the violations alleged and further failed to provide any basis for the calculation and assessment of the \$47,231.73 in fines.

3. The fine of \$47,231.73 in Citation No. 1256 shall be reduced or vacated to reflect the assessment of fees based on

Petitioner's transportation revenues and not its other revenues related to arranging accommodations and meals on group travel packages; and/or, in the alternative, afford Petitioner a hearing to present evidence to support its position.²

II.

Discussion

HAR chapter 6-61, subchapter 16, governs the issuance of commission declaratory orders. HAR §§ 6-61-161 and 6-61-163 state in relevant part:

§6-61-161 Form and contents. A petition for declaratory order must conform to the requirements of subchapter 2 and contain the following:

.

(5) Proof of service on . . . the consumer advocate.

§6-61-163 Dismissal of petition. The commission may, without notice or hearing, dismiss a petition for declaratory ruling that fails to comply with the requirements of this subchapter.

HAR §§ 6-61-161 and 6-61-163 (emphasis added).³

Although section 6-61-161, HAR, requires proof of service on the Consumer Advocate, Petitioner failed to include a Certificate of Service with its Petition indicating that it served the Consumer Advocate with copies of its Petition.

²Petitioner attached a memorandum in support of its request for declaratory order, a verification, the Declaration of Tim Lui-Kwan, and Exhibits 1-6.

³HAR chapter 61, subchapter 2, requires each party filing an application, complaint or "other pleading" with the commission to serve two copies of the same on the Consumer Advocate. See HAR § 6-61-18.

The Consumer Advocate is an ex officio party to this docket, pursuant to HRS § 269-51 and HAR § 6-61-62, and is required to submit a statement of position within twenty days after it has been served with copies of an application or complaint. As it does not appear that the Consumer Advocate was served with copies of the Petition, and to allow the Consumer Advocate sufficient time to meaningfully participate in this proceeding,⁴ the commission dismisses the Petition without prejudice, pursuant to HAR §§ 6-61-161(5) and 6-61-163.

III.

Orders

THE COMMISSION ORDERS:

1. The Petition for declaratory ruling, filed on February 13, 2008, is dismissed without prejudice.

⁴HAR § 6-61-162 states:

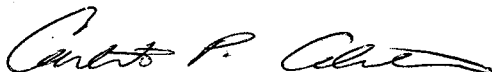
- (a) Within forty-five days after the submission of a petition for declaratory ruling, the commission shall:
 - (1) Deny the petition in writing, stating the reasons for that denial;
 - (2) Issue a declaratory order on the matters contained in the petition; or
 - (3) Set the matter for hearing, as provided in subchapter 3.
- (b) If the matter is set for hearing, the commission shall render its findings and decision, unless otherwise indicated at the time of the hearing, within thirty days after the close of the hearing or, if briefs are filed, thirty days after the last brief is filed.

HAR § 6-61-162.


2. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii MAR 14 2008.

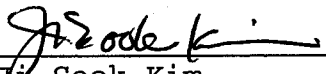
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
John E. Cole, Commissioner

By 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Ji Sook Kim
Commission Counsel

2008-0034.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24092 upon the following Petitioners, 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
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Counsel for GALAXY TOUR, INC.



Karen Higashi

DATED: MAR 14 2008