

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
LA MODA LLC, dba TOR TOURS)
For a Motor Carrier Certificate or)
Permit.)
_____)

DOCKET NO. 03-0152

ORDER NO. 20438

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

2003 SEP 15 P 3:47

RECEIVED

Filed Sept. 15, 2003
At 10:00 o'clock A .M.

Karen Higashi.
Chief Clerk of the Commission

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)
LA MODA LLC, dba TOR TOURS) Docket No. 03-0152
For a Motor Carrier Certificate or) Order No. 20438
Permit.)
_____)

ORDER

I.

By Decision and Order No. 20364, filed on August 6, 2003, in the instant docket, the commission granted LA MODA LLC, dba TOR TOURS ("La Moda") a certificate of public convenience and necessity to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Hawaii, excluding Waipio Valley, in the (1) 1-to-7 passenger classification, and (2) 8-to-25 passenger classification, limited to utilizing motor vehicles with a maximum manufacturer's seating capacity of 15 passengers.

On August 27, 2003, a motion for enlargement of time to file a motion to intervene ("Motion for Enlargement of Time") in this proceeding was filed by Jack's Tours, Inc. ("Jack's Tours").^{1,2} Jack's Tours states that its lack of knowledge

¹The Motion for Enlargement of Time consisted of a letter to the commission explaining its tardiness and requesting that the commission accept its motion to intervene, which was filed with the Motion for Enlargement of Time. We, thus, will treat Jack's Tours' letter as a motion to enlarge the time for filing its motion to intervene.

²Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-57(2), the deadline for intervention is not later than 20 days after a

regarding the intervention process caused it to miss the filing deadline.

II.

Pursuant to HAR § 6-61-23(a)(2), we may, in our discretion, grant a request for an enlargement of time upon a showing of excusable neglect. Jack's Tours asserts that because of its inexperience with the intervention process, it neglected to serve the commission with its motion to intervene.³ We find that Jack's Tours' reason for failing to serve the commission with a timely motion to intervene does not rise to the level of excusable neglect. Ignorance of the rules governing practice and procedure before the commission or mistakes construing such rules is not "excusable neglect". Enos v. Pacific Transfer & Warehouse Inc., 80 Hawaii 345, 351-354, 910 P.2d 116, 122-125 (1996). We, therefore, conclude that Jack's Tours has not met the standard of excusable neglect required for the granting of an enlargement of time, and, accordingly, we must deny its Motion for Enlargement of Time.

notice of pending application has been published in a newspaper of general circulation within the State of Hawaii, or within the county or counties affected by the application. Notice of La Moda's pending application was published in the Hawaii Tribune Herald and West Hawaii Today newspapers on July 7, 2003. The last day for intervention was July 28, 2003, pursuant to HAR § 6-61-22. As noted above, Jack's Tours' motion for intervention was filed on August 27, 2003.


³Pursuant to HAR § 6-61-57, Jack's Tours timely served the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs and La Moda with a motion to intervene.


III.

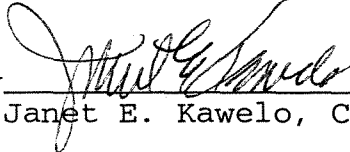
THE COMMISSION ORDERS that Jack's Tours' Motion for Enlargement of Time to file a motion to intervene, filed on August 27, 2003, is denied.

DONE at Honolulu, Hawaii this 15th day of September, 2003.


PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Benedyne S. Stone
Commission Counsel

03-0152.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 20438 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

LA MODA LLC, dba TOR TOURS
c/o SABINE-MAEVA ANDRESEN
P. O. Box 5093
Kailua-Kona, HI 96745

ALISA MIYAKE
OPERATIONS MANAGER
JACK'S TOURS, INC.
737 Kanoelehua Avenue
Hilo, HI 96720



Karen Higashi

DATED: September 15, 2003