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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. 21300

Filed August 12, 2004
At 2:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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CONSUMER AFFAIRS
STATE OF HAWAII

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 -----)) 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. 21300
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ORDER AND NOTICE OF HEARING

I.

Introduction

ROBERT'S HAWAII, INC. and ROBERT'S TOURS AND TRANSPORTATION, INC. (collectively, "Robert's") filed a Motion to Dismiss Complaint ("Motion to Dismiss") on January 26, 2004, requesting the commission to dismiss the complaint filed by AKINA ALOHA TOURS, INC. AND AKINA BUS SERVICE, LTD. (collectively, "Akina"), pursuant to Hawaii Administrative Rules ("HAR") § 6-61-69. By its Motion to Dismiss, Robert's asserts that Akina fails to state a claim upon which relief may be granted. Simultaneously with the filing of its Motion to Dismiss, Robert's answered Akina's Complaint, in accordance with HAR § 6-61-69(a) ("Robert's Answer").

Akina filed a Memorandum in Opposition to Respondents' Motion to Dismiss Complaint ("Akina's Opposition") on March 8, 2004, pursuant to HAR § 6-61-41(c).¹

Robert's requested leave to reply and replied to Akina's Opposition on March 15, 2004 ("Robert's Reply Statement"). In its Reply Statement, Robert's again disputes that it is operating a regular route service, and requests that the commission dismiss Akina's Opposition "due to its untimely filing."²

The commission filed a Notice of Hearing on May 4, 2004, indicating that a hearing on the Motion to Dismiss would be held at 11:30 a.m. on June 3, 2004 at the Public Utilities Commission Hearing Room at 564 South High Street, Conference Room B, Wailuku, HI 96793. On June 3, 2004, the commission held the hearing on Robert's Motion to Dismiss at the above-mentioned time, date, and place, at which Robert's and Akina, through its counsel, presented oral arguments on Robert's Motion to Dismiss.

II.

Discussion

In reviewing Robert's Motion to Dismiss, the commission

¹HAR § 6-61-41(c) provides, in relevant part, that an opposing party to a motion may serve and file counter affidavits and a written statement of reasons in opposition to the motion and of the authorities relied upon not later than five (5) days after the motion is served. As stated above, Akina filed its Opposition on March 8, 2004, approximately thirty-three (33) days late. Accordingly, the commission will accord the requisite amount of weight to the Akina's untimely filing.

²Robert's Reply Statement at 4.

must accept the allegations set forth in Akina's Complaint to be true and must construe them in the light most favorable to the Complainant, Akina.³ In addition, the commission must determine whether Akina's Complaint and Robert's Answer on their faces indicate disputed issues of material fact bearing upon the rights and liabilities of the carriers and whether the conflict in the allegations of material facts should be resolved by hearing.⁴

After reviewing the record, hearing the oral arguments of both parties on the matter, and accepting that the allegations in Akina's Complaint to be true and viewing them in the light most favorable to Akina, the commission finds that Akina's Complaint and Robert's Answer indicate disputed issues of material fact bearing on the rights and liabilities of the parties. Accordingly, we conclude that these conflicts of allegations of material fact should be resolved by a hearing. Any party may retain legal counsel if the party so desires. An individual may appear on the individual's behalf, or a member of a partnership may represent the partnership, or an officer or authorized employee of a corporation

³Bremner v. City & County of Honolulu, 96 Hawai'i 134, 138-39, 28 P.3d 350, 354-55 (App. 2001). See also E Noa Corp. v. Robert's Tours & Transp., 103 Hawai'i 480, 83 P.3d 743, 2004 WL 231486 (2004).

⁴See Shoreline Trans. v. Robert's Tours & Transp., 70 Hawai'i 585, 594-95, 779 P.2d 868, 873-74 (1989) (explaining that Shoreline's complaint alleging that Robert's Tours had been operating an illegal regular route scheduled bus service without proper authorization from the commission "entailed a determination of past and present rights and liabilities of the two carriers" requiring a "contested case" hearing within the meaning of HRS § 91-1(5)).

or trust or association may represent the corporation, trust, or association.

We further conclude that hearings officer Benedyne Stone should be appointed to hear this matter, in accordance with Hawaii Revised Statutes ("HRS") § 269-3.

III.


Orders

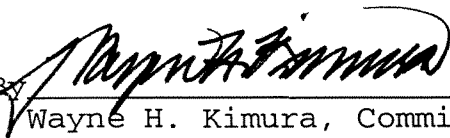
THE COMMISSION ORDERS:

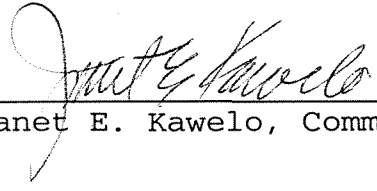
1. Robert's request for leave to reply to Akina's Opposition is granted.
2. Robert's Motion to Dismiss is denied.
3. The commission appoints hearings officer Benedyne Stone to preside over the hearing to be held on this matter, in accordance with HRS § 269-3.
4. Akina and Robert's shall appear at the Public Utilities Commission's Hearing Room, State Office Building, Conference Room B, 54 South High Street, Wailuku, HI 96793, at 10:00 a.m. on September 21, 2004 for a hearing on Akina's Complaint, pursuant to HAR § 6-61-70.
5. The hearings officer shall hold a pretrial conference with Akina and Robert's, via telephone, on September 14, 2004 at 9:00 a.m. to discuss the scope, timing, and other details of the aforementioned hearing.

DONE at Honolulu, Hawaii AUG 12 2004

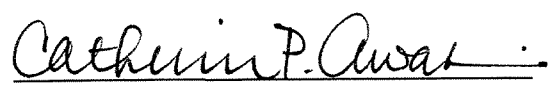
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Catherine P. Awakuni
Commission Counsel

03-0397.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21300 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

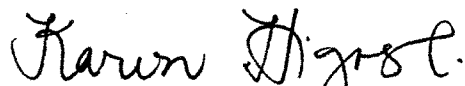
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Karen Higashi

DATED: AUG 12 2004