

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
S. BRUCE BERGER, dba)
IN-RECOVERY SERVICES)
)
To Sell, Lease, Assign, Mortgage or)
Otherwise Dispose of, or Encumber)
The Whole or Any Part of Its)
Property, Certificate, or Permit.)
_____)

DOCKET NO. 04-0273

ORDER NO. 21517

Filed Dec. 23, 2004
At 1 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

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

RECEIVED
2004 DEC 29 A 8:15

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)
S. BRUCE BERGER, dba)
IN-RECOVERY SERVICES)
To Sell, Lease, Assign, Mortgage or)
Otherwise Dispose of, or Encumber)
The Whole or Any Part of Its)
Property, Certificate, or Permit.)

Docket No. 04-0273

Order No. **21517**

ORDER

I.

Application to Transfer Common Carrier Authority

On September 13, 2004, S. BRUCE BERGER, dba IN-RECOVERY SERVICES ("Transferor"), filed an application seeking commission approval to transfer certificate of public convenience and necessity number 4846-C ("Certificate No. 4846-C") to PLATINUM MANAGEMENT LLC, dba THE LIMO COMPANY ("Transferee"), pursuant to Hawaii Revised Statutes ("HRS") § 271-18. Under Certificate No. 4846-C, and pursuant to HRS § 271-12, Transferor is authorized to operate as a common carrier of passengers by motor vehicle over irregular routes on the island of Maui in the 1-to-7 passenger classification.

Transferor served copies of the application on the Hawaii Transportation Association, which consists of carriers that may be affected by Applicant's proposed service, and on the Division of Consumer Advocacy, Department of Commerce and

Consumer Affairs ("Consumer Advocate"). By a statement filed on September 15, 2004, the Consumer Advocate indicated that it will not participate in this proceeding.

Motions to intervene ("Motions to Intervene") were timely filed by KATHERINE BARR, dba TOWN & COUNTRY LIMOUSINE, TEMPTATION TOURS, INC., and WAILEA LIMOUSINE, INC. (collectively "Movants") on October 22, 25, and 26, 2004, respectively. On November 1, 2004, Transferee timely filed a response to the Motions to Intervene. On November 8, 2004, Transferor filed a motion for enlargement of time ("Motion for Enlargement of Time") to file a memorandum in opposition to Movants' Motions to Intervene ("Memorandum in Opposition").¹ On that same day, Transferor also filed its Memorandum in Opposition.

II.

A.

Motion for Enlargement of Time

Pursuant to Hawaii Administrative Rules ("HAR") § 6-61-23(a)(2), the commission may, in its discretion, grant a request for an enlargement of time upon a showing of excusable neglect. Transferor's explanation for requesting an enlargement of time is that he recently received the motions of intervention. The commission finds that Transferor's explanation does not amount to excusable neglect. We, therefore, conclude that Transferor's

¹Pursuant to Hawaii Administrative Rules §§ 6-61-41(c) and 6-61-22, Transferor's Memorandum in Opposition, to be considered timely, should have been filed on November 2, 3 and 4, respectively.

Motion for Enlargement of Time should be denied. Accordingly, Transferor's Memorandum in Opposition will not be considered in the commission's ruling on Movants' Motions to Intervene.

B.

Motions to Intervene

Pursuant to HAR § 6-61-55, "[i]ntervention shall not be granted except on allegations which are reasonably pertinent to and do not unreasonably broaden the issues already presented." Additionally, intervention as a party in a proceeding before the commission is a matter resting within the commission's sound discretion. See In re Application of Hawaiian Electric Co., Ltd., 56 Haw. 2660 (1975).

In its Motions to Intervene, Movants allege, among other things, the following:² (1) that Transferee will be in direct competition with Movants; (2) that Movants have invested substantial amounts of money into building up their businesses; (3) that Transferee's proposed service is not required by the present or future public convenience and necessity; (4) that Movants' participation can assist in the development of a sound record; (5) that Movants' participation will not broaden the issues or unduly delay the proceeding; and (6) that the application is deficient.

Based upon our review of Movants' Motions to Intervene and the record, we find that Movants' assertions do not warrant a

²Movants' Motions to Intervene are virtually identical in style and substance. Unless otherwise noted, all discussion relates to Movants collectively.

grant of intervention by the commission. Movants have not convinced the commission that their participation as parties is necessary to a proper determination of the instant application, or that a grant of intervention to Movants would not unnecessarily delay the instant proceeding. Accordingly, we conclude that Movants' Motions to Intervene should be denied.

III.

Orders

THE COMMISSION ORDERS:

1. Transferor's Motion for Enlargement of Time, filed on November 8, 2004, is denied.

2. Movants' Motions to Intervene, filed on October 22, 25, and 26, 2004, are denied.

DONE at Honolulu, Hawaii DEC 23 2004.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By Wayne H. Kimura
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

04-0273.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 21517 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

S. BRUCE BERGER, dba
IN-RECOVERY SERVICES
1750 Kalakaua Avenue, #3728
Honolulu, HI 96826

PLATINUM MANAGEMENT LLC, dba
THE LIMO COMPANY
c/o ALEX ANTONIO
P. O. Box 959, PMB #530
Kihei, HI 96753

KATHERINE BARR, dba
TOWN & COUNTRY LIMOUSINE
333 Waipalani Road
Haiku, HI 96708

TEMPTATION TOURS, INC.
DAVID CAMPBELL, PRESIDENT
21 Ahinahina Place
Kula, HI 96790

WAILEA LIMOUSINE, INC.
JANINE LaFLECHE, PRESIDENT
P. O. Box 428
Wailuku, HI 96793



Karen Higashi

DATED: DEC 23 2004