BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

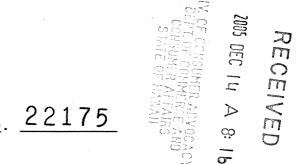
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In the Matter of the Application of)

MICHAEL JOHN MONTAPERT, dba KAUAI SNORKEL TOURS

To Sell, Lease, Assign, Mortgage or) Otherwise Dispose of, or Encumber) The Whole or Any Part of Its) Property, Certificate, or Permit.) DOCKET NO. 05-0225



DECISION AND ORDER NO. 22175

Dec. 9 Filed , 2005 8 o'clock _ At .М.

Chief Clerk of the Commission

ATTEST: A True Copy KAREN HIGASHI Chief Clerk, Public Utilities State of Hawaii. Commission,

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In the Matter of the Application of)) MICHAEL JOHN MONTAPERT, dba KAUAI SNORKEL TOURS)

Docket No. 05-0225

To Sell, Lease, Assign, Mortgage or) Otherwise Dispose of, or Encumber) The Whole or Any Part of Its) Property, Certificate, or Permit.) Decision and Order No. 22175

DECISION AND ORDER

By this Decision and Order, the commission approves the transfer of certificate of public convenience and necessity number 3560-C ("Certificate No. 3560-C") from MICHAEL JOHN MONTAPERT, dba KAUAI SNORKEL TOURS ("Transferor"), to KAUAI SNORKEL TOURS, INC. ("Transferee"), subject to certain conditions, as described herein.

I.

Application to Transfer Common Carrier Authority

On September 6, 2005, Transferor filed an application seeking commission approval to transfer Certificate No. 3560-C to Transferee, pursuant to Hawaii Revised Statutes ("HRS") § 271-18, and for temporary commission approval transfer to Certificate No. 3560-C Transferee, to pursuant to HRS § 271-18(f). Under Certificate No. 3560-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 Kauai in the 8-to-25 passenger classification, limited to providing transportation services in conjunction with its snorkel tours.

Transferor served copies of the application on the Hawaii Transportation Association, which consists of carriers that may be affected by the proposed transfer, and on the Division of Consumer Advocacy, Department of Commerce and Consumer Affairs ("Consumer Advocate"). The Consumer Advocate did not participate in this proceeding, and no persons moved to intervene in this docket.

II.

Findings and Conclusions

Upon review of Transferor's request to transfer Certificate No. 3560-C to transferee on a permanent basis, the commission finds that Transferee is fit, willing, and able to perform the services presently performed by Transferor, and that the proposed transfer of Certificate No. 3560-C is just and reasonable and will be consistent with the public interest. Accordingly, the commission concludes that the proposed transfer is in accordance with HRS § 271-18, and should, therefore, be approved.

With respect to Transferor's request for temporary approval to transfer Certificate No. 3560-C, the commission's approval of Transferor's request to transfer Certificate No. 3560-C to Transferee on a permanent basis in the instant application renders moot Transferor's request for

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temporary approval of the transfer. We, thus, conclude that there is good cause to dismiss Transferor's request for temporary approval of the transfer.

III.

<u>Orders</u>

THE COMMISSION ORDERS:

1. Transferor's request to transfer Certificate No. 3560-C to Transferee is approved.

2. Transferor's request for temporary approval to transfer Certificate No. 3560-C to Transferee, having been rendered moot, is dismissed.

3. Transferee shall comply with all of the commission's requirements for common carriers by motor vehicle including, but not limited to, filing a lawful tariff, paying a fee of \$20 for motor carrier gross revenues, and filing the appropriate insurance documents.

4. Transferor shall surrender Certificate No. 3560-C, and a certificate reflecting the operating authority granted by this Decision and Order shall be issued to Transferee.

5. Transferor shall file with the commission his annual financial report for the period of operation from January 1, 2005, to the effective date of this Decision and Order, and shall pay the associated motor carrier gross revenue fee.

6. Transferor and Transferee shall comply with the foregoing requirements within one hundred and twenty (120) days

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after service of this Decision and Order. Failure to comply within the time specified constitutes cause for this commission to void this Decision and Order.

7. Transferee shall not commence operations under this Decision and Order until it has received written confirmation from the commission that all requirements have been met.

DONE at Honolulu, Hawaii ____ DEC - 9 2005

PUBLIC UTILITIES COMMISSION OF THE STATE OF HAWAII

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Carlito P. Caliboso, Chairman

(Excused) By_ Wayne H. Kimura, Commissioner

Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Stacey Kawasaki Djou Commission Counsel

05-0225.rpr

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing <u>Decision and Order No. 22175</u> 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

MICHAEL JOHN MONTAPERT, dba KAUAI SNORKEL TOURS P. O. Box 255 Lawai, HI 96765

KAUAI SNORKEL TOURS, INC. P. O. Box 255 Lawai, HI 96765

Karin Karei

DATED: DEC - 9 2005