

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

HERMINA M. MORITA)
)
 Complainant,)
)
 vs.)
)
 HAWAII SUPERFERRY, INC.)
)
 Respondent.)
 _____)

DOCKET NO. 2007-0324

ORDER NO. 23952

RECEIVED

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DIV. OF CONSUMER ADVOCACY
PUBLIC UTILITIES AND
COMMUNITY AFFAIRS
STATE OF HAWAII

Filed December 31, 2007
At 11 o'clock A .M.

for Stan A. D.
Chief Clerk of the Commission

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

for Charles P. Luasasopo

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

HERMINA M. MORITA)	
)	
Complainant,)	Docket No. 2007-0324
)	
vs.)	Order No. 23952
)	
HAWAII SUPERFERRY, INC.)	
)	
Respondent.)	
_____)	

ORDER

By this Order, the commission adopts Respondent HAWAII SUPERFERRY, INC.'s ("Respondent") proposed procedural schedule.

I.

Background

On September 27, 2007, Complainant HERMINA M. Morita ("Complainant") filed a formal Verified Complaint against Respondent. By Order No. 23696, filed on October 4, 2007, in this docket, the commission directed Respondent to file an answer to the formal complaint within twenty (20) days after the date of service of the order. On October 26, 2007, Respondent timely filed its Answer to Verified Complaint.

By Order No. 23806, filed on November 6, 2007, in this docket, the commission directed the parties¹ to submit, within

¹The DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate") is an ex officio party to this proceeding, pursuant to Hawaii Revised Statutes ("HRS") § 269-51 and Hawaii Administrative Rules ("HAR") § 6-61-62(a).

thirty (30) days, a stipulated procedural schedule or separate proposals by the same date, in the event that they were unable to agree on a joint procedural order.²

On December 17, 2007, Respondent submitted a letter informing the commission that Complainant and Respondent were unable to reach an agreement on a stipulated procedural schedule. According to Respondent, Complainant and Respondent agreed that "because of changes in the law enacted subsequent to the filing of the Complaint, rather than attempting to agree on a stipulation for a further procedural schedule regarding agreed-upon issues, procedures and schedule, the parties would stipulate that they would first direct their attention to a motion to dismiss the Complaint to be filed by [Respondent]." However, Complainant and Respondent were unable to agree on the scope of the motion to dismiss and whether Respondent would be able to file a reply memorandum. Attached to Respondent's December 17, 2007 letter was a proposed procedural schedule for filing of a motion to dismiss.

Also, on December 17, 2007, Complainant filed a proposed procedural schedule limited to the filing of a motion to dismiss.

On November 13, 2007, the Consumer Advocate submitted a letter to the commission stating that it would not participate in this proceeding.

²On December 4, 2007, Respondent's counsel submitted a letter to the commission requesting an extension of time until December 17, 2007 in which to submit a stipulated procedural schedule.

On December 28, 2007, Respondent filed its Motion to Dismiss Complaint, Memorandum in Support of Motion to Dismiss Complaint, Declaration of John L. Garibaldi, Declaration of Audrey E.J. Ng, Exhibits "A" - "O," and Certificate of Service.

II.

Discussion

In their separate proposed procedural schedules, both Complainant and Respondent propose that Respondent file a motion to dismiss by December 31, 2007, and if the motion fails to dispose of the issues within this docket in their entirety, then they will submit a complete stipulated procedural schedule. As noted above, the parties disagreed on two issues: 1) the scope of the motion; and 2) whether Respondent should be permitted to file a reply memorandum. With regard to the first issue, Complainant submits that Respondent's motion should be limited in scope to the issue of the effect of Act 2 of the Second Special Session of 2007. Respondent contends that it should not be limited in the scope of its motion. With regard to the second issue, Complainant submits that Respondent should not be permitted any reply brief; Respondent believes that it should be so allowed.

Upon review, the commission finds that Respondent should not be limited in the scope of its motion. In the interests of judicial efficiency and economy, all of the arguments supporting a motion to dismiss should be raised in one filing at this early stage of the docket. Also, Respondent

should be allowed to file a reply brief since such a pleading will create a more complete record.

Therefore, the commission hereby adopts Respondent's Proposed Procedural Schedule. The pertinent deadlines are as follows:

Respondent shall file a motion to dismiss on or before December 31, 2007.

Complainant will respond to the motion to dismiss within twenty (20) days of service of the motion to dismiss.

Respondent may file a reply memorandum within ten (10) days after the date of service of Complainant's response.

Upon the filing of an order addressing the motion to dismiss, if there are any issues remaining, the parties will, within thirty (30) days after service of the order, submit a further stipulation regarding a procedural schedule, incorporating the agreed-upon issues, procedures, and schedule with respect to this proceeding. If the parties are unable to agree upon a schedule, each party shall submit a proposed schedule within the thirty (30) day deadline.

III.

Order

THE COMMISSION ORDERS:


Respondent's proposed procedural schedule, is adopted.


DONE at Honolulu, Hawaii

DEC 31 2007

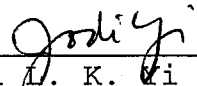
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By: 
Carlito P. Caliboso, Chairman

By: 
John E. Cole, Commissioner

By: 
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:


Jodi L. K. Ki
Commission Counsel

2007-0324.sl

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23952 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

CATHERINE P. AWAKUNI
EXECUTIVE DIRECTOR
DIVISION OF CONSUMER ADVOCACY
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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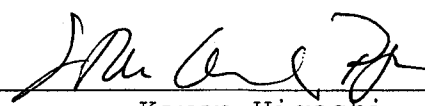
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for Karen Higashi

DATED: DEC 31 2007