

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Request of)  
NORINA DEREIS SOUZA, dba. )  
ISLAND TOP SOIL )  
To Place Operating Authority on )  
Inactive Status. )

DOCKET NO. 04-0309

ORDER NO. 24094

Filed March 14, 2008  
At 9 o'clock A.M.

Karen Higashi.  
Chief Clerk of the Commission

RECEIVED

2008 MAR 17 A 10:44

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

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

K. Higashi.

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 \_\_\_\_\_)

Docket No. 04-0309  
 Order No. 24094

ORDER

By this Order, the commission grants the motion for reconsideration filed by NORINA DEREIS SOUZA, dba ISLAND TOP SOIL ("Movant"), and thus vacates Order No. 22917, filed on October 4, 2006, and Order No. 23708, filed on October 11, 2007.

I.

History

By Order No. 22917, filed on October 4, 2006, the commission placed Certificate No. 111-C on inactive status for a period of one year, until October 3, 2007. In the order, the commission informed Movant that if Certificate No. 111-C was not reactivated prior to the expiration of the period of inactivity, i.e., by October 3, 2007, the commission would deem it to be abandoned and revoked, as required by Hawaii Revised Statutes § 271-19(b). Certificate No. 111-C was not reactivated prior to the expiration of the period of inactivity, i.e., by October 3, 2007. Accordingly, the commission revoked Certificate No. 111-C by Order No. 23708, filed on October 11, 2007.

On March 7, 2008, Movant filed a motion for reconsideration of Order No. 23708, and a motion for enlargement of time to file its motion for reconsideration, as the motion for reconsideration was untimely.

II.

Discussion

HAR § 6-61-23(a)(2), which governs requests for enlargement of time, states in relevant part:

(a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a specified time, the commission for good cause shown may at any time, in its discretion:

. . . . .

(2) Upon motion made after the expiration of the specified period, permit the act to be done where the failure to act was the result of excusable neglect . . . .

Thus, section 6-61-23(a)(2) allows Movant to file an untimely motion for reconsideration only upon a showing of excusable neglect.

In its motion for enlargement of time, Movant states that it did not receive Order Nos. 22917 and 23708 because they were sent to the wrong address, i.e., P. O. Box 1857, Waianae, Hawaii 96792. A review of the commission's records indicates that Movant provided a new address, 86-911 Pukui Place, Waianae, Hawaii 96792, when she filed her request for inactive status on October 27, 2004, and that she provided the same address on three Annual Financial Reports filed on September 11, 2006. As it appears that the commission erred in not amending its records to indicate the change of address, and as a result

Order Nos. 22917 and 23708 were sent to the wrong address, we find that Movant's explanation for requesting an enlargement of time amounts to excusable neglect. Accordingly, we conclude that Movant's motion for enlargement of time should be granted.

In regard to Movant's motion for reconsideration, as Movant apparently did not receive Order Nos. 22917 and 23708, and, thus, had no notice that Certificate No. 111-C was placed on inactive status, and, in addition, no notice that Certificate No. 111-C had to be reactivated prior to the expiration of the period of inactivity or it would be revoked, the commission finds good cause to vacate Order Nos. 22917 and 23708.

### III.


#### Orders

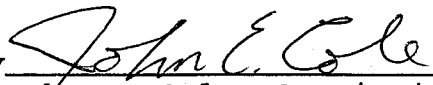
##### THE COMMISSION ORDERS:


1. Movant's motion for enlargement of time to file its motion of reconsideration is granted.
2. Movant's motion for reconsideration is granted.
3. Order No. 22917, filed on October 4, 2006, is vacated.
4. Order No. 23708, filed on October 11, 2008, is vacated.
5. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii MAR 14 2008.

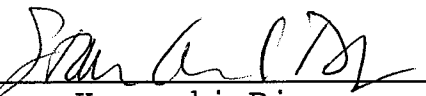
PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

By   
Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:

  
Stacey Kawasaki Djou  
Commission Counsel

04-0309.en

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 24094 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  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

NORINA DEREIS SOUZA, dba  
ISLAND TOP SOIL  
87-1449 Paakea Road  
Waianae, HI 96792

  
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Karen Higashi

DATED: MAR 14 2008