

NO. 24960

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of ROBERT'S TOURS AND TRANSPORTATION, INC.

TO ANSWER A COMPLAINT AND SUMMONS
REGARDING AN ALLEGED VIOLATION OF THE STATE MOTOR CARRIER LAW.

APPEAL FROM THE PUBLIC UTILITIES COMMISSION
(CITATION NOS. 194, 195, 257, 258, 259, 260,
261, 531, 532, 533, 534, 535, 542 AND 546)

ORDER DISMISSING APPEAL

(By: Moon, C.J., Levinson, Nakayama, Ramil, and Acoba, JJ.)

Upon review of the statements supporting and contesting jurisdiction and the record, it appears that we do not have jurisdiction over Appellant Robert's Tours and Transportation's (Appellant Robert's Tours) appeal from Citation Order No. 239 and Citation Order 342. Under HRS § 271-32(e) (Supp. 2001) and HRS § 271-33 (1993), "[a]n appeal from a final order of the PUC is taken to the Supreme Court of Hawai'i." In re Gray Line Hawai'i, Ltd., 93 Hawai'i 45, 52, 995 P.2d 776, 783 (2000) (citations and brackets omitted). However, under HRS § 271-32(e) and HRS § 271-33, the aggrieved party is required to file a timely motion for reconsideration as a prerequisite to any appeal. Thus, there is no appealable order until the Appellee State of Hawai'i Public Utilities Commission (Appellee PUC) resolves a timely filed motion for reconsideration.

"The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served[.]" HRS § 271-32(b) (Supp. 2001) (emphasis added); see also HAR § 6-61-137 (2002) ("The motion shall be filed within ten days after the decision or order is served upon the party[.]"). The record shows that service of Citation Order No. 239 upon counsel for Appellant Robert's Tours was effective on

December 21, 2001, the date when "[t]he document [wa]s properly stamped, addressed, and mailed to the last known address of the party on file with the commission or to its attorney." HAR § 6-61-21(d)(3) (2002). Because Citation Order No. 239 was served by mail, HAR § 6-61-21(e) (2002) gave Appellant Robert's Tours two additional days to move for reconsideration, for a total twelve-day period extending until January 2, 2002. However, Appellant Robert's Tours filed its motion for reconsideration of Citation Order 239 on January 3, 2002, one day late.

Appellant Robert's Tours' failure to file a timely motion for reconsideration of Citation Order 239 precluded Appellee PUC from assuming jurisdiction over the motion. Instead of denying Robert's Tour's motion for reconsideration of Citation Order 239 based on the merits, Appellee PUC correctly dismissed it as untimely. Neither Citation Order 239 nor Citation Order 342 is an appealable order. Therefore, we lack appellate jurisdiction over this case. Accordingly,

IT IS HEREBY ORDERED that this appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 30, 2002.