

Decision No. R04-0576

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-240CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

DENVER TAXI, LLC, DOING BUSINESS AS YELLOW CAB
AND/OR SUPER SHUTTLE 1-800-BLUE-VAN,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING PAYMENT AND ADMISSION
OF LIABILITY, ASSESSING A CIVIL
PENALTY, AND CLOSING DOCKET**

Mailed Date: June 1, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

1. The issuance of Civil Penalty Assessment Notice No. 28597 (CPAN) commenced this proceeding. The CPAN alleges that, on May 6, 2004, Denver Taxi LLC, doing business as Yellow Cab and/or Super Shuttle 1-800-Blue-Van (Respondent), had in service three vehicles which had tires with insufficient tread groove pattern depth, thus violating 49 *Code of Federal Regulations* (CFR) § 393.75(b), which is incorporated by reference into the *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties* by Rule 4 *Code of Colorado Regulations* (CCR) 723-15-2.1.

2. The CPAN states that, if payment is received within ten days from the date of the CPAN's issuance, the civil penalty is \$300. The CPAN further states that, if payment is not received within ten days, the Commission Staff (Staff) will seek a civil penalty in the amount of \$600, which is the maximum civil penalty for the alleged violation. The CPAN also states that payment of the assessment is an acknowledgement (*i.e.*, admission) of liability. *See* Respondent's Options, CPAN at 2.

3. On May 7, 2004, Staff served the CPAN on Respondent. *See* CPAN at 2.

4. On May 12, 2004, Respondent tendered payment of \$300 by check. Respondent admitted the alleged violation. *See* CPAN at 2, signed by Respondent.

5. Respondent does not dispute the Commission's jurisdiction. The Commission has subject matter jurisdiction over this case and personal jurisdiction over the Respondent.

6. Section 393.75(b) of 49 CFR provides, as pertinent here, that a bus "shall have a tread groove pattern depth of at least 4/32 of an inch when measured at any point on a major tread groove." The CPAN alleges that Respondent operated three vehicles on May 6, 2004, and that each vehicle had at least one tire with a tread groove pattern depth of less than 4/32 of an inch when measured in accordance with 49 CFR § 393.75(b).

7. Respondent has admitted, and the Administrative Law Judge (ALJ) finds and concludes, that, on May 6, 2004, Respondent violated 49 CFR § 393.75(b) (incorporated by reference by Rule 4 CCR 723-15-2.1) three times as alleged in the CPAN.

8. In accordance with the provisions of the CPAN, the civil penalty to be assessed in this proceeding is \$300, which amount Respondent tendered by check to the Commission on

May 12, 2004. The ALJ finds and concludes that the amount of the civil penalty to be assessed is reasonable, is in accord with Commission procedures, and is in the public interest.

9. The ALJ finds and concludes that, assuming the check clears and the money is collected by the Commission, this docket will be closed.

10. The ALJ finds and concludes that, in the event the check does not clear and the Commission does not collect the money, the \$300 payment was not made within the required ten days; the maximum civil penalty is \$600; the acknowledgement is void; and this docket should not be closed. In the event the check does not clear, Staff may file, within 14 days of learning that the check did not clear, a request to reopen this proceeding and may cite this Decision as the basis for the request to reopen.

11. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Denver Taxi LLC, doing business as Yellow Cab and/or Super Shuttle 1-800-Blue-Van, has violated Rule 4 *Code of Colorado Regulations* 723-15-2.1 and 49 *Code of Federal Regulations* § 393.75(b), as more fully set out above and in Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 28597.

2. A civil penalty is assessed against Denver Taxi LLC, doing business as Yellow Cab and/or Super Shuttle 1-800-Blue-Van, in the amount of \$300 *provided* the submitted payment clears and the money is collected by the Commission.

3. This docket is closed, subject to reopening pursuant to ¶ II.4.

4. In the event the submitted payment does not clear and the money is not collected by the Commission, the maximum civil penalty is \$600; the acknowledgement is void; and this docket may be reopened. In the event the submitted payment does not clear, Commission Staff may file, within 14 days of learning that the payment did not clear, a request to reopen this proceeding.

5. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

6. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

7. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge