

Decision No. R04-1186

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-482CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

M K B S LLC, DOING BUSINESS AS METRO TAXI,

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: October 13, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

1. The issuance of Civil Penalty Assessment Notice No. 71565 (CPAN) commenced this proceeding. The CPAN alleges that, on seven dates in September 2004, M K B S LLC, doing business as Metro Taxi (Respondent), violated 49 *Code of Federal Regulations* (CFR) §§ 392.3, 395.5(a)(2), 395.8(a)(2), and 390.35(a) and (b) (which are 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) a total of 16 times. *See* CPAN, alleged violations no. 1, no. 2, and nos. 5 through and including 18. In addition, the CPAN alleges that, on September 15 and 16, 2004, Respondent violated Rule 4 CCR 723-15-7.3.1.2. *See* CPAN, alleged violations no. 3 and no. 4. There are a total of 18 alleged violations.

2. The CPAN states that, if the Commission received payment within ten days from the date of the CPAN's issuance, the civil penalty would be \$2,200. The CPAN further states that, if the Commission did not receive payment within ten days, the Commission Staff (Staff) would seek a civil penalty in the amount of \$4,400, which is the maximum civil penalty for the 18 alleged violations. The CPAN also states that payment of the assessment is an acknowledgment (*i.e.*, admission) of liability. *See* Respondent's Options, CPAN at 2.

3. On September 23, 2004, Staff served the CPAN on Respondent.

4. On October 1, 2004, within the ten-day time period, Respondent tendered its payment of \$2,200 by check. In addition, Respondent admitted the 18 alleged violations. *See* CPAN at 2, signed by Respondent.

5. Respondent does not dispute the Commission's jurisdiction. The undersigned Administrative Law Judge (ALJ) finds and concludes that the Commission has subject matter jurisdiction over this case and personal jurisdiction over the Respondent.

6. Respondent has admitted, and on that basis the ALJ finds and concludes, that, on September 9, 11, 12, 13, 14, 15, and 16, 2004, Respondent violated the cited provisions of 49 CFR §§ 392.3, 395.5(a)(2), 395.8(a)(2), and 390.35(a) and (b) (incorporated by reference by Rule 4 CCR 723-15-2.1) as alleged in the CPAN.

7. Respondent has admitted, and on that basis the ALJ finds and concludes, that, on September 15 and 16, 2004, Respondent violated Rule 4 CCR 723-15-7.3.1.2 as alleged in the CPAN.

8. In accordance with the provisions of the CPAN, the civil penalty to be assessed in this proceeding is \$2,200, which amount Respondent tendered by check to the Commission on October 1, 2004. The ALJ finds and concludes that, assuming the check clears and the money is

collected by the Commission, the \$2,200 civil penalty is reasonable; is in accord with Commission procedures and policy; 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 \$2,200 payment was not made within the required ten days; the maximum civil penalty is \$4,400; the acknowledgment 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. M K B S LLC, doing business as Metro Taxi, violated 49 *Code of Federal Regulations* §§ 392.3, 395.5(a)(2), 395.8(a)(2), and 390.35(a) and (b) (which are incorporated by reference into the *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties* by Rule 4 *Code of Colorado Regulations* 723-15-2.1) a total of 16 times, as alleged in Civil Penalty Assessment Notice No. 71565 violations no. 1, no. 2, and nos. 5 through and including 18.

2. M K B S LLC, doing business as Metro Taxi, violated Rule 4 *Code of Colorado Regulations* 723-15-7.3.1.2 a total of two times, as alleged in Civil Penalty Assessment Notice No. 71565 violations no. 3 and no. 4.

3. A civil penalty is assessed against M K B S LLC, doing business as Metro Taxi, in the amount of \$2,200 *provided* the payment submitted on October 1, 2004, clears and the money is collected by the Commission.

4. Docket No. 04G-482CP is closed, subject to reopening pursuant to the provisions of Ordering Paragraph 5.

5. In the event the submitted payment does not clear and the money is not collected by the Commission, the maximum civil penalty is \$4,400; the acknowledgment is void; and Docket No. 04G-482CP 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.

6. 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.

7. 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.

8. 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