

Decision No. R04-1366

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04G-296EC

---

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

STEVE R. URIOSTE, DOING BUSINESS AS  
GOODFATHER LIMOUSINE SERVICE,

RESPONDENT.

---

**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
ASSESSING CIVIL PENALTY**

---

Mailed Date: November 19, 2004

Appearances:

John Roberts, Esq., Assistant Attorney General, for Staff of the  
Colorado Public Utilities Commission; and

Steve R. Urioste, *pro se* for Respondent Steve R. Urioste, doing  
business as Goodfather Limousine Service.

**I. STATEMENT**

1. On May 28, 2004, Staff of the Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 28625 to Steve R. Urioste, doing business as Goodfather Limousine Service (Respondent).

2. In the CPAN as presented to Respondent, Staff alleged that Respondent committed one violation of § 40-16-102.5, C.R.S., and two violations of Rule 4 *Code of*

*Colorado Regulations* (CCR) 723-15-2.1, which incorporates certain federal transportation carrier safety regulations. Specifically, the two allegations of Rule violations were that Respondent violated 49 *Code of Federal Regulations* (CFR) § 393.75 and 49 CFR § 391.41(a).

3. Respondent admitted to the violation of 49 CFR § 391.41(a) and paid a fine. The remaining allegations are the alleged violation of § 40-16-102.5, C.R.S., and the alleged violation of 49 CFR § 393.75.<sup>1</sup>

4. On July 2, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing. This Order established a hearing on July 21, 2004, in Denver, Colorado. The undersigned Administrative Law Judge (ALJ), to whom the case is assigned, vacated that hearing date. The hearing was scheduled for October 14, 2004. *See* Decision No. R04-0835-I.

5. The hearing was held as scheduled on October 14, 2004. Testimony was received from Mr. Tony Muñoz, a Commission Compliance Investigator, and from Mr. Steve Urioste, the Respondent. Exhibits No. 1 through No. 4 were marked for identification and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

6. Pursuant to § 40-6-109, C.R.S., the record and exhibits of the proceeding together with a written recommended decision are transmitted to the Commission.

## **II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS OF LAW**

7. Respondent is an individual who operates a limousine service. He provides “luxury limousine service,” as defined in § 40-16-101(3.3), C.R.S.; holds PUC Authority No. LL-690; and is properly authorized to operate the limousine service.

---

<sup>1</sup> In this Recommended Decision the ALJ refers only to the two remaining allegations.

8. Respondent does not challenge the Commission's jurisdiction, and the facts establish the Commission's jurisdiction in this proceeding. The Commission has subject matter jurisdiction over this case. In addition, the Commission has personal jurisdiction over Respondent, who acknowledged that he received the CPAN (*see* Exhibit No. 2) and who entered a general appearance at the hearing.

9. On May 29, 2004, Respondent received (by certified mail, return receipt requested) CPAN No. 28625, charging Respondent with one violation of § 40-16-102.5, C.R.S., and one count of violation of Rule 4 CCR 723-15-2.1 and, more specifically, of failure to comply with 49 CFR § 393.75. The alleged violation of § 40-16-102.5, C.R.S., carries a maximum civil penalty of \$1100; the alleged violation of 49 CFR § 393.75 carries a maximum civil penalty of \$200; and the maximum civil penalty in this matter is \$1300. *See* Exhibit No. 1.

10. The violations charged by Staff in the CPAN result from a road-side inspection performed the night of May 22, 2004 by Staff member Tony Muñoz at the El Jebel Temple, which was the site of the Cherry Creek High School prom. Mr. Muñoz was one of three Commission investigators performing inspections of vehicles that night at that location.

11. After observing Mr. Urioste deliver passengers to the prom, Mr. Muñoz approached Respondent and requested road-side inspection documents. These included Respondent's driver's license, Department of Transportation card, charter order,<sup>2</sup> and Commission authorization letter. As pertinent here, Respondent was unable immediately to produce the charter order, but he requested time to produce it.

---

<sup>2</sup> The charter order is the document evidencing the charter arrangement. Section 40-16-102.5, C.R.S., requires that it contain "the name and pickup address of the passengers who have arranged for use of the vehicle."

12. While Respondent searched for the charter order, Mr. Muñoz conducted an inspection of the limousine Respondent was driving. Using a tire gauge to measure the depth of the tire tread, Mr. Muñoz found that the tread on each of the vehicle's two back tires measured 1/32 of an inch or less. Respondent does not dispute this.

13. After a short but unspecified period of time, Respondent still was unable to produce the charter order. Consequently, Mr. Muñoz gave him a hand-written citation-type advisement of the violations (*i.e.*, the insufficient tire tread and the failure to produce a charter order when requested).

14. The inspection occurred between 9:30 p.m. and 10:00 p.m. on May 22, 2004.

15. After giving Mr. Urioste the citation, Mr. Muñoz conducted inspections of other carriers at the El Jebel Temple location.

16. At some unspecified time after conducting the inspection of Respondent, Mr. Muñoz moved to a location approximately one block from the El Jebel Temple site. He conducted inspections at this new location. He was at this second location until approximately 1:00 a.m. on May 23, 2004.

17. It is Respondent's usual business practice to prepare a charter contract for each charter transportation service he performs. The contract is on a form which contains, among other things, the following information: passenger name, type of service, date and time of service, pick-up location, drop-off location(s), rate, name of contact person, and payment information. Respondent prepared such a contract for the charter limousine service he provided on May 22, 2004. The contract is dated May 14, 2004. *See* Exhibit No. 3.

18. It is Respondent's usual business practice to keep the relevant charter contract in the vehicle with him while he is providing the chartered limousine service to which the charter

contract pertains. Nonetheless, when requested to produce the charter contract on May 22, 2004, Respondent was unable immediately to do so. In an effort to locate the document, Respondent parked and searched his vehicle for the charter order.

19. Respondent located the charter contract about two hours after the inspection occurred (that is, on May 22, 2004 between 11:30 p.m. and midnight). Respondent looked for Mr. Muñoz at the El Jebel Temple site in order to show him the charter order but was unable to locate him. Mr. Muñoz testified that, because he had moved to a location away from the El Jebel Temple site, it was possible that Respondent searched for him but could not locate him.

20. On May 26, 2004, Respondent installed two new tires on his limousine to replace the two rear tires with the tread less than 1/32 of an inch. *See* Exhibit No. 4. Respondent ordered the tires before May 22, 2004.

21. The inspection of Respondent was performed in the normal course of business.

22. The pending CPAN aside, Respondent is in good standing with the Commission.

23. In this case Staff bears the burden of proof by a preponderance of the evidence. *See* Rule 4 CCR 723-1-82(a). Staff has met its burden of proof in this case.

24. The ALJ finds that, on May 22, 2004 at the El Jebel Temple, Respondent had in his possession “a manifest or charter order containing the name and pickup address of the passengers who ha[d] arranged for use of [his] vehicle,” as required by § 40-16-102.5, C.R.S. The ALJ further finds that, notwithstanding having the requisite charter order in his possession, Respondent did not make that charter order “available immediately upon request” of the Commission’s authorized representative (*i.e.*, Mr. Muñoz), as required by § 40-16-102.5, C.R.S. This failure to make the charter order immediately available is a violation of the statute. The

ALJ finds and concludes that Respondent violated § 40-16-102.5, C.R.S., as alleged in the CPAN.

25. The ALJ finds that, on May 22, 2004, Respondent's limousine had two rear tires, each of which had a tire tread depth of 1/32 of an inch or less. Section 393.75(c) of 49 CFR requires that vehicles of the type driven by Respondent on May 22, 2004 have tires with a tread depth of at least 2/32 of an inch. The tread depth of Respondent's vehicle's two rear tires did not meet this requirement. The ALJ finds and concludes that Respondent violated 49 CFR § 393.75 as alleged in the CPAN.

26. Having found that Respondent violated the cited statute and regulation, it is necessary to determine the amount of the civil penalty to be assessed for these violations. In the CPAN, Staff seeks a civil penalty of \$1300.

27. Based on the record in this case, the ALJ finds that \$300 is the appropriate civil penalty amount to be assessed. In making this determination, the ALJ began with the maximum civil penalty for these violations (*i.e.*, \$1300); considered Commission guidance provided in previous civil penalty case decisions; considered the purposes served by civil penalties; considered the factors in aggravation; considered the factors in mitigation; and considered the range of civil penalty assessments found to be reasonable in other civil penalty cases.

28. As factors in aggravation the ALJ considered that, as evidenced by his ordering replacement tires before May 22, 2004, Respondent was aware that the rear tires on his limousine needed to be replaced but chose to operate the vehicle without replacing those tires. This raises safety concerns because it is possible that tires with little or no tread will fail and, should it occur while the vehicle is being operated, the failure could endanger the public health, safety, and welfare. This is of particular concern in this case because both back tires had tread

depth below the minimum established by the rule and, thus, the risk of harm from tire failure was increased. In addition, with respect to the failure immediately to produce the charter order, this is an obligation which the Colorado General Assembly imposed on providers of luxury limousine service. As Mr. Urioste acknowledged in his testimony, charter orders and the production of those charter orders when requested are safeguards against the operation of “gypsy” carriers who provide service without insurance, without registration, and without oversight. Such “gypsy” operations are contrary to the public welfare, health, and safety and undercut legitimate luxury limousine operators who are registered and who do comply with the law. Protection against “gypsy” operators serves important public interests.

29. As factors in mitigation, the ALJ considered that Respondent had taken action prior to May 22, 2004 to obtain new tires (that is, he ordered the tires) and that he replaced the tires soon after that date. The ALJ considered that Respondent had a charter order for the transportation provided on May 22, 2004 and had that charter order with him when he provided the transportation. The ALJ considered that, aside from this proceeding, Respondent is and has been in good standing with the Commission. The ALJ considered the size of Respondent’s limousine operation, which is small, and the financial impact of a civil penalty on Respondent.

30. The ALJ finds that a civil penalty of \$300 achieves the following purposes underlying civil penalty assessments: (a) deterring future violations, whether by other similarly-situated carriers or by Respondent; (b) motivating Respondent to come into compliance with the law; and (c) punishing Respondent for his past behavior.

31. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

**III. ORDER****A. The Commission Orders That:**

1. Steve R. Urioste, doing business as Goodfather Limousine Service, is assessed a civil penalty in the amount of \$300.

2. Steve R. Urioste, doing business as Goodfather Limousine Service, shall remit to the Public Utilities Commission the amount of \$300 within 30 days of the effective date of this Recommended Decision.

3. 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.

4. 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.



5. If exceptions to this 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