

Decision No. R03-0102

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 02A-412CP

IN THE MATTER OF THE APPLICATION OF BOULDER EXPRESS, LLC, D/B/A BLUE SKY SHUTTLE (FORMERLY OWNER/DRIVER UNITED CORP., D/B/A BLUE SKY SHUTTLE), 1412 WEST 104TH AVENUE, SUITE 114, NORTHGLENN, COLORADO 80234 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-410CP

IN THE MATTER OF THE APPLICATION OF FLYING EAGLE EXPRESS SHUTTLE SERVICE, INC., 13024 EAST ALASKA PLACE, AURORA, COLORADO 80012 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

DOCKET NO. 02A-471CP

IN THE MATTER OF THE APPLICATION OF OVERSEAS EMPORIUM, INC., 16740 EAST ILIFF AVENUE, AURORA, COLORADO 80013 FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTIONS TO
DISMISS APPLICATION**

Mailed Date: January 28, 2003

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The captioned application of Overseas Emporium, Inc., doing business as Airport Transportation Services and/or ATS Shuttle (Overseas Emporium), was originally filed with the

Colorado Public Utilities Commission (Commission) on August 30, 2002, and was published in the Commission's "Notice of Applications Filed" on September 9, 2002.

2. Subsequently, Overseas Emporium moved to amend its application. That motion was granted and an amended application was filed on November 13, 2002. *See*, Decision No. R02-1251-I. The amended application was published in the Commission's "Notice of Applications Filed" on November 18, 2002. As amended, Overseas Emporium seeks authority to operate as a motor common carrier transporting passengers and their baggage, in charter and call-and-demand limousine service, between all points in the Colorado counties of Adams, Arapahoe, Denver, Douglas, and Jefferson, on the one hand, and, Denver International Airport, on the other hand.

3. Timely interventions were filed in this proceeding by Nemarda Corporation (Nemarda), Metro Taxi, Inc. (Metro Taxi), SuperShuttle International Denver, Inc. (SuperShuttle), Denver Taxi, LLC (Denver Taxi), Boulder Shuttle, LLC (Boulder Shuttle), Golden West Commuter, LLC (Golden West), and Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle (Wolf). Nemarda subsequently withdrew its intervention.

4. This matter was consolidated for hearing with Commission Docket Nos. 02A-412CP and 02A-410CP.¹ *See*, Decision No. R02-1251-I. Under the terms of that decision, certain other parties to this consolidated proceeding were afforded intervenor status in this application; namely, Kids Wheels, LLC (Kids Wheels), and Jody Cowen, doing business as Cowen Enterprises (Cowen).

¹ The application encompassed by Docket No. 02A-410CP was dismissed on December 31, 2002. *See*, Decision No. R02-1480.

5. The hearing of Docket Nos. 02A-412CP and 02A-471CP commenced on January 6, 2003. *See*, Decision No. R02-1284-I. Overseas Emporium, Boulder Express, LLC, doing business as Blue Sky Shuttle (Boulder Express) (the applicant in Docket No. 02A-412CP), SuperShuttle, Denver Taxi, Boulder Shuttle, Metro Taxi, Golden West, and Wolf appeared through their respective legal counsel. No appearance was entered by or on behalf of Kids Wheels and Cowen.

6. Several preliminary matters were dealt with prior to commencement of the hearing. Initially, motions to dismiss the interventions of Kids Wheels and Cowen due to the failure of these parties to appear at hearing were granted. The Golden West Motion to Set Aside Interim Order No. R02-0013-I submitted on January 5, 2003, was considered and denied. The Motion to Modify or Set Aside Decision No. R03-0009-I, Motion for Hearing on Motion to Withdraw, Alternatively to Continue Hearing submitted by Overseas Emporium's counsel, The Harper Law Firm, P.C., on January 6, 2003, was considered and denied. Finally, a stipulation entered into between Overseas Emporium and Golden West further amending the authority sought by Overseas Emporium was approved. This resulted in the withdrawal of the Golden West intervention to that application.

7. Operating testimony in connection with the Overseas Emporium application was presented on January 7, 2003, by Overseas Emporium's President, Mr. Anwar M. Ahmed. During the course of Mr. Ahmed's testimony, Exhibit Nos. 20 and 21 were identified. Exhibit No. 20, Mr. Ahmed's personal financial statement, was offered into evidence but was subsequently withdrawn. Exhibit No. 21, a written business plan prepared by Mr. Ahmed, was offered into evidence but was rejected since it was not pre-filed as an exhibit or properly produced in response to discovery propounded by SuperShuttle.

8. Mr. Ahmad was the only witness who testified concerning the operational and financial fitness of Overseas Emporium to conduct common carrier operations that might result from a grant of authority in this proceeding. He testified, however, that Overseas Emporium would not be the entity actually operating any such authority notwithstanding the fact that it is the named applicant herein. Instead, it is Mr. Ahmed's intent to form a new limited liability company, separate and apart from Overseas Emporium, to conduct transportation operations under any authority that might be so granted. He testified that no *pro forma* financial statements had yet been prepared for this new entity. Although he testified that he has sufficient resources to personally fund any such entity, no admissible evidence was presented regarding the nature or extent of those resources.

9. At the conclusion of Mr. Ahmed's testimony, Wolf moved to dismiss the Overseas Emporium application on the ground that it was not the proper applicant in this matter. Boulder Express, SuperShuttle, Denver Taxi, Boulder Shuttle and Metro Taxi joined in the motion.

10. After considering the arguments of the parties, the motion was granted. It is apparent from Mr. Ahmed's testimony that some other as yet unformed entity is the appropriate applicant for the operating authority purportedly applied for by Overseas Emporium. As such, the original and amended applications filed by Overseas Emporium are defective. Even assuming Overseas Emporium to be the proper applicant, no admissible evidence was presented at the hearing establishing its financial fitness to conduct common carrier operations if authority were to be issued to it.

11. The dismissal of the Overseas Emporium application is without prejudice. It or any other related entity are free to re-file applications with the Commission for motor carrier operating authority at any future time.

12. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. The motion to dismiss the application filed by Overseas Emporium, Inc., doing business as Airport Transportation Services and/or ATS Shuttle, in Docket No. 02A-471CP submitted by Schafer-Schonewill and Associates, Inc., doing business as Englewood Express and/or Wolf Express Shuttle, Metro Taxi, Inc., SuperShuttle International Denver, Inc., Denver Taxi, LLC, and Boulder Shuttle, LLC, at the hearing of this matter, is granted.

2. The captioned application of Overseas Emporium, Inc., doing business as Airport Transportation Services and/or ATS Shuttle, is dismissed, without prejudice.

3. Docket No. 02A-471CP is closed.

4. 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.

5. 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.

6. 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.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

DALE E. ISLEY

Administrative Law Judge