

Decision No. C04-1393

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-156EC

Civil Penalty Assessment Notice No. 28027

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

ROBERT ENTRUP, AMERICAN BUS RIDE, INC. DOING BUSINESS AS BOOGIE BUS,
AMERICAN CHARTERS, AAAA AMICA BUS COMPANY, LIMOLINER AND A. AABLE
RENTS, INC.,

Respondents.

**DECISION DENYING EXCEPTIONS
AND REMANDING TO ALJ**

Mailed Date: November 26, 2004

Adopted Date: November 17, 2004

I. BY THE COMMISSION

A. Background

1. This matter comes before the Commission for consideration of exceptions filed by Robert Entrup on October 18, 2004. Staff of the Commission (Staff) filed its response to the exceptions on October 25, 2004.

2. The exceptions are to Recommended Decision No. R04-1148, which was issued on October 1, 2004. This decision imposed a total civil penalty amount of \$44,400 for failing to file proof of insurance with the Commission, and \$3,700 for failing to register with the Commission. Initially we note that Mr. Entrup did not submit a transcript with the exceptions, so

all facts are as established by the Administrative Law Judge (ALJ) in Recommended Decision No. R04-1148 pursuant to § 40-6-113(4), C.R.S.

3. On March 30, 2004, Staff served Civil Penalty Assessment Notice (CPAN) No. 28027 on Robert Entrup, American Bus Ride, Inc., doing business as Boogie Bus, American Charters, AAAA Amica Bus Company, Limoliner, and A. Aable Rents, Inc. (Respondent).

The charges in the CPAN were as follows:

1. Failure to register with the Commission in violation of § 40-16-103, C.R.S., date of violation (DOV): July 12, 2003
2. Failure to maintain insurance in the required amount contrary to § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: July 6, 2003
3. Failure to file proof of insurance with the Commission in violation of § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: July 6, 2003
4. Failure to register with the Commission contrary to § 40-16-103, C.R.S., DOV: August 30, 2003
5. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: August 30, 2003
6. Failure to provide proof of insurance contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: August 30, 2003
7. Failure to register with the Commission contrary to § 40-16-103, C.R.S., DOV: August 30, 2003
8. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: August 30, 2003
9. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: August 30, 2003
10. Failure to maintain registration with the Commission contrary to § 40-16-103, C.R.S., DOV: January 31, 2004
11. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: January 31, 2004
12. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: January 31, 2004
13. Failure to maintain registration with the Commission contrary to § 40-16-103, C.R.S., DOV: February 21, 2004

14. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: February 21, 2003 and
15. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2. DOV: February 21, 2004.

Total penalties assessed in the CPAN were \$89,200. At the hearing on August 12, 2004, Staff appeared through their counsel, and Mr. Entrup appeared *pro se*. Staff moved to dismiss charge Nos. 2, 5, 8, 11, 13, and 14. Respondent acknowledged liability with respect to charge Nos. 3, 6, 9, 12, and 15. Respondent elected to contest charge Nos. 1, 4, 7, and 10.

4. The ALJ considered the evidence put forward by Staff, and concluded that Staff established that Respondent was not registered with the Commission as alleged in the contested charges. The ALJ then imposed civil penalties as set forth above. Recommended Decision No. R04-1148 was issued on October 1, 2004, and exceptions and replies were filed in a timely fashion.

B. Discussion

5. In the exceptions, Respondent alleges that, at the time of the penalty, Respondent was operating as an equipment rental dealer and was not subject to the jurisdiction of the Commission. The findings of fact, which may not be challenged here, demonstrate that charter bus service was provided as indicated in the affidavits and testimony introduced at the hearing.

6. Mr. Entrup also challenges the jurisdiction of the Commission to hear this matter, arguing that the court system has exclusive jurisdiction as set forth in § 40-16-108, C.R.S., which provides:

- (1) The district court or, within its jurisdiction, the county court of any county in or through which any motor vehicle carrier exempt from regulation as a public utility operates has jurisdiction in all matters arising under this article on account

of the operations of such motor vehicle carrier exempt from regulation as a public utility.

Respondent states that this statute provides the courts with exclusive jurisdiction. We read the statute differently. The statute provides that the courts in the county in which a carrier exempt from regulation operates has jurisdiction in all matters arising out of the carrier's operations. Thus, if the Respondent were to appeal a decision of the Commission, proper jurisdiction would exist in the county in which the carrier operates. Nothing in the statute indicates that jurisdiction resides exclusively with the courts, and indeed, this Commission has been determining civil penalty matters for many years. Section 40-16-107(3), C.R.S., provides that "In addition to any other sanctions or penalties which may be imposed pursuant to law, motor vehicle carriers exempt from regulation as public utilities shall be subject to civil penalties as provided in sections 40-7-112 to 40-7-116." Section 40-7-116, C.R.S., in turn states that:

If the person cited does not pay the prescribed penalty within ten days of the issuance of the notice, the civil penalty notice shall constitute a complaint to appear before the commission. The person cited shall contact the commission on or before the time and date specified in the notice to set the complaint for a hearing on the merits in accordance with section 40-6-109.

The General Assembly clearly intended that the Commission should hold hearings on civil penalty assessments.

7. Because the findings of fact support a determination that Respondent was offering charter bus service, and because the Legislature clearly intended that the Commission preside over civil penalty hearings for carriers exempt from regulation as public utilities, we deny Respondent's exceptions. We do however remand this matter to the ALJ to determine what entity should be responsible for paying the fine.

8. The CPAN in this matter was assessed against Robert Entrup, American Bus Ride, Inc. (doing business as Boogie Bus, American Charters, AAAA Amica Bus Co. and Limoliner),

and A Aable Rents, Inc. The ALJ ordered "respondent" to pay the penalty, but "respondent" includes all of the above entities. From the findings of fact in the Recommended Decision, it appears that the bus service was being provided through a valid corporate entity. However, we cannot glean from the findings of fact in the Recommended Decision what party should be responsible for paying the fine. We therefore remand this matter to the ALJ for the limited purpose of determining what entity should be responsible for paying the civil penalty assessed in this matter, and why.

C. Conclusions

9. Because charter bus service was clearly being provided as found by the ALJ, and because the Commission clearly has jurisdiction to hear civil penalty matters, we deny the exceptions. Because the Recommended Decision does not state how the imposed penalty should be imposed, we remand this matter to the ALJ for the limited purpose of determining who should pay the civil penalty, and why.

II. ORDER.

A. The Commission Orders That:

1. The exceptions filed by Mr. Entrup are denied.
2. This matter is remanded to the Administrative Law Judge for the limited purpose of determining what entity should pay the civil penalty, and why.
3. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.
4. This Order is effective on its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
November 17, 2004**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners