

Decision No. R04-0344

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-006EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JONATHAN LEVINE, D/B/A VAILLUXURYLIMO, HUMMERSOFVAIL,
AHUMMERTOAVAIL, DUIBUSTERSOFVAIL,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
ASSESSING CIVIL PENALTY**

Mailed Date: April 2, 2003

I. STATEMENT

1. This is a civil penalty assessment (CPAN) proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondent, Jonathan Levine, doing business as VAILLUXURYLIMO, HUMMERSOFVAIL, AHUMMERTOAVAIL AND DUIBUSTERSOFVAIL (Levine).

2. In CPAN No. 28406 Staff alleges that Levine violated § 40-16-102.5, C.R.S. on December 23, 2003, by failing to carry a manifest or charter order in one of his luxury limousine vehicles being operated on that day by driver/employee, Christopher Sanders (Sanders), at the Eagle County Airport in Eagle County, Colorado. *See*, Exhibits 2 and 3. The subject CPAN seeks imposition of a civil penalty in the amount of \$1,100.00.

3. The matter was set for hearing at the Commission's Offices in Denver, Colorado, on April 1, 2004, pursuant to an Order Setting Hearing and Notice of Hearing issued by the Commission on February 10, 2004.

4. The undersigned Administrative Law Judge called the matter for hearing at the assigned time and place. Staff appeared through Mr. Reinhard Wolf, a Commission Compliance Investigator. Levine did not appear. However, Sanders appeared and testified at the hearing. During the course of the hearing, Exhibits 1 through 3 were identified, offered, and admitted into evidence. In addition to Sanders, testimony was received from Mr. Wolf in support of the allegations contained in the subject CPAN.

5. In accordance with § 40-6-109, C.R.S., the undersigned now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT

6. Levine provides luxury limousine services within the State of Colorado pursuant to registration no. LL-01285. The mailing address provided to the Commission by Levine is 2121 North Frontage Road 212, Vail, Colorado 81657. *See*, Exhibit 1.

7. On December 23, 2003, the Commission's Safety and Enforcement Division was advised that a luxury limousine vehicle had improperly gained access to the Eagle County Airport. Mr. Wolf investigated the matter and determined that the vehicle in question was registered to Levine and that the operator of the subject vehicle, Sanders, was not carrying a manifest or charter order containing the name and pickup address of the passengers who had

arranged for use of the vehicle. As a result, Mr. Wolf issued Sanders a Violation Warning at that time. *See*, Exhibit 2.

8. On December 31, 2003, Mr. Wolf prepared CPAN No. 28406 and mailed a copy of it to Levine via certified mail at the address referred to above. *See*, Exhibit 1. The return receipt to the certified mailing, signed by a P. J. Blick, was returned to the Commission on January 5, 2004. Shortly after CPAN No. 28406 was mailed, Levine telephoned Mr. Wolf and discussed it with him and another member of the Commission's Enforcement Staff. This evidences Levine's receipt of the copy of the subject CPAN that was mailed to him on December 31, 2004.

9. Sanders confirmed through his testimony that he was Levine's employee and was the operator of the vehicle involved in the incident referred to in CPAN No. 28406. He also confirmed that, although Levine had prepared and provided him with a manifest/charter order for the involved passengers, he inadvertently failed to carry it in the vehicle when he was dispatched to pick them up on the date and at the location in question. Thus, Sanders acknowledged that the violation alleged in CPAN No. 28406 had, in fact, occurred.

10. Sanders explained that the conditions of his employment with Levine required him to pay any penalty imposed in connection with CPAN No. 28406. He requested, therefore, that certain mitigating factors be taken into consideration in establishing the level of the penalty to be assessed. These include that fact that he has been operating luxury limousine vehicles in the Vail area for five years and, except for the incident documented by the subject CPAN, has never been previously cited for violating any public utility law. During a portion of that time he owned his own luxury limousine business and provided service under a luxury limousine

registration issued by the Commission. Mr. Wolf indicated that he had no knowledge of any prior public utility law violations by Sanders.¹

III. DISCUSSION

11. Section 40-16-102.5, C.R.S. provides, in pertinent part, that “ [A] luxury limousine company shall, at all times when providing service, carry in each vehicle a manifest or charter order containing the name and pickup address of the passengers who have arranged for the use of the vehicle. Such manifest or charter order shall be made available immediately upon request to any authorized representative of the commission, a law enforcement agency, or an airport authority.”

12. The evidence establishes conclusively that on December 23, 2003, a luxury limousine vehicle registered to and providing luxury limousine service on behalf of Levine failed to carry a manifest or charter order containing the name and pickup address of the passengers it was dispatched to pick up on that date at the Eagle County Airport. This constitutes a violation of § 40-16-102.5, C.R.S. as alleged in CPAN No. 28406.

13. Section 40-7-113(1)(g), C.R.S. authorizes the Commission to assess a civil penalty “of not more than” \$1,100 for the violation encompassed by CPAN No. 28406. This allows the Commission to assess a lesser penalty if mitigating circumstances so warrant.

14. Under the circumstances presented here, a reduction in the allowable penalty is justified. The evidence indicates that Levine actually prepared and delivered to Sanders a manifest or charter order in connection with the involved trip. Sanders understood that the law

¹ The testimony presented at hearing indicated that, under the circumstances described above, a stipulated settlement of the subject CPAN (which would have included a Staff recommendation to reduce the penalty to be assessed) would likely have been agreed to but for policy changes recently implemented by the Commission that effectively preclude the informal resolution of civil penalty assessment matters.

required him to carry this paperwork in the vehicle he was operating and he assumed that responsibility. The evidence indicates that his failure to do so was unintentional. There is no indication that Sanders is a chronic violator of public utilities law and, indeed, he appears to have a citation-free record. For these reasons, the penalty to be assessed in this matter will be reduced to \$350.00.

IV. CONCLUSIONS

15. Staff has sustained its burden of proving the allegation contained in CPAN No. 28406 by a preponderance of the evidence as required by § 40-7-116, C.R.S. The total penalty for such violation is reduced from \$1,100.00 to \$350.00. *See*, § 40-7-113(1)(g), C.R.S.

V. ORDER

A. The Commission Orders That:

1. Jonathan Levine, doing business as VAILLUXURYLIMO, HUMMERSOFVAIL, AHUMMERTO VAIL AND DUIBUSTERSOFVAIL, is assessed a civil penalty in the amount of \$350.00 in connection with Civil Penalty Assessment Notice No. 28406 and shall pay the total assessed penalty of \$350.00 within ten days of the effective date of this Order.

2. 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.

3. 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.

4. 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