

Decision No. R04-0411

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-087CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

LITTLE STINKER'S TAXI CAB SERVICE,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ASSESSING CIVIL PENALTY**

Mailed Date: April 21, 2004

Appearances:

Paul Hoffman, Staff of the Public Utilities Commission; and

Joe A. Martinez, Alamosa, Colorado, Little Stinker's Taxi Cab Service.

I. STATEMENT

1. On February 24, 2004, Staff of the Public Utilities Commission (Complainant) issued Civil Penalty Assessment Notice (CPAN) No. 28506 to Little Stinker's Taxi Cab Service (Respondent).

2. Complainant charges Respondent in CPAN No. 28506 with five violations of 4 *Code of Colorado Regulations* (CCR) 723-15-2.1, that incorporates certain federal motor

carrier safety regulation violations. The Federal Motor Carrier Safety Regulations are codified in Chapter Three of Title 49 of the Code of Federal Regulations.

3. A hearing of the matter was scheduled for April 6, 2004 in Walsenburg, Colorado. On that date, a hearing was held. Testimony was received from Paul Hoffman and Joe A. Martinez. A multi-paged document marked for identification as Exhibit No. 1 was offered by Complainant and received into evidence. At the conclusion of the case, the matter was taken under advisement.

4. 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 AND CONCLUSIONS OF LAW

5. Respondent operates a taxicab service in Alamosa and surrounding areas pursuant to its certificate of public convenience and necessity.

6. The Commission has jurisdiction over this matter.

7. On February 24, 2004, the Complainant served Respondent with CPAN No. 28506, charging Respondent with five violations contrary to 4 CCR 723-15-2.1 which incorporates parts of the Federal Motor Carrier Safety Regulations.

8. Respondent is charged with the following specific violations:

1. Respondent failed to require driver to provide list of violations relating to driver Tony Medina occurring on January 2, 2004 in violation of 4 CCR 723-15-2.1; Part 391.27;
2. Respondent failed to require driver to provide list of violations relating to Arthur Joe Martinez occurring on January 3, 2004 contrary to 4 CCR 723-15-2.1; Part 391.27;

3. Respondent failed to require driver to provide list of violations relating to Joe Arthur Martinez occurring on January 30, 2004 in violation of 4 CCR 723-15.2.1; Part 391.27;
4. Respondent did not maintain a complete and accurate record of duty status relating to Joe Arthur Martinez occurring on January 14, 2004 contrary to 4 CCR 723-15-2.1; Part 395.8(a); and
5. Respondent on January 29, 2004 failed to maintain a complete and accurate record of duty status relating to driver Joe Arthur Martinez, contrary to 4 CCR 723-15-2.1, Part 395.8(a).

All of the violations carry a penalty of \$200 each, for a total civil penalty of \$1,000.

9. The violations charged on CPAN No. 28506 are a result of a safety and compliance review of Respondent performed on February 10, 2004 (Exhibit No. 1). Not of all of the violations found in this Transportation Safety and Compliance Review are charged in the CPAN.

10. Some of the violations found in the February 10, 2004 Transportation Safety and Compliance Review are repeat violations found in the Transportation Safety and Compliance Review performed by Complainant on October 4, 2001 and January 8, 2003. (See Exhibit No. 1.)

11. Mr. Paul Hoffman, Staff Investigator for Complainant, testified that he brought to the attention of Respondent the violations, and the need to correct the same. Although the last safety and compliance review shows improvement from the transportation safety and compliance reviews of October 4, 2001 and January 8, 2003, some of the violations have not been corrected.

12. Mr. Joe Arthur Martinez, owner of Respondent testified that he did not intend to commit the violations and that he attempted to, and in fact corrected many of the violations cited in previous safety and compliance reviews of Complainant.

13. Mr. Martinez testified that he and his wife have worked with Mr. Hoffman to correct the violations, however, in some cases he and his wife did not understand what Mr. Hoffman wanted. Mr. Martinez testified that he and his wife are more aware of the requirements of the Commission's rules and regulations and stated that the violations would not be repeated.

14. The uncontroverted evidence of record establishes that Complainant has met its burden of establishing by competent and substantial evidence that Respondent violated the cited rules and regulations contained in the five charges of CPAN No. 28506. Some of the violations are repeat violations that were brought to the attention of Respondent in previous transportation safety and compliance reviews.

15. Although the record establishes that Respondent has improved its compliance with the Commission's rules and regulations, and has made a good faith effort to attempt to address and correct the violations, the stated penalties contained in CPAN No. 28506 should be assessed. It is important for the public safety that transportation companies, including Respondent adhere to the Commission's rules and regulations, and the civil penalty should act as a deterrent to the commission of further violations.

16. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

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

1. Respondent Little Stinker's Taxi Cab Service is found to be in violation of the charges contained in Civil Penalty Assessment Notice No. 28506, and is assessed a civil penalty in the amount of \$1,000.

2. Little Stinker's Taxi Cab Service shall remit to the Public Utilities Commission the amount of \$500 no later than May 14, 2004. A second payment of \$500 shall be remitted to the Public Utilities Commission no later than June 14, 2004. Respondent may elect to pay the total assessed penalty amount of \$1,000 on May 14, 2004.

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