

Decision No. R04-0466

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-063CP

IN THE MATTER OF THE APPLICATION OF LEI FALEAO, D/B/A ALOHA EXPRESS,
4711 RANCH CIRCLE, COLORADO SPRINGS, COLORADO 80918, FOR AUTHORITY TO
OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DISMISSING APPLICATION**

Mailed Date: May 6, 2004

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. The captioned application of Lei Faleao, doing business as Aloha Express (Aloha Express), was filed with the Colorado Public Utilities Commission (Commission) on February 12, 2004, and was published in the Commission's "Notice of Applications Filed" on February 23, 2004.

2. RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs (RDSM) and Ben Sagenkahn, doing business as Peak Transit (Peak Transit) filed timely interventions in this matter.

3. By Order Setting Hearing and Notice of Hearing (Hearing Order) issued on March 29, 2004, the Commission set the matter for hearing on May 4, 2004. The hearing was scheduled in Colorado Springs, Colorado, at the request of Aloha Express. The Hearing Order was properly served on all parties.

4. The undersigned administrative law judge called the matter for hearing at the assigned time and place. An appearance was entered on behalf of RDSM through its counsel. Neither Aloha Express nor Peak Transit appeared.

5. A hearing recess of approximately 30 minutes was taken in order to afford Aloha Express and Peak Transit a further opportunity to appear at the hearing. At the conclusion of that period RDSM moved to dismiss the application for want of prosecution. It also requested that it be awarded any fees and expenses it might incur in intervening in any similar subsequent application that might be filed by Aloha Express.

6. The RDSM motion to dismiss the application was granted. Aloha Express' failure to appear at the hearing, notice of which was properly given, constitutes a failure to prosecute this matter thereby warranting dismissal of the same. *See, Rathbun v. Sparks*, 162 Colo. 110, 425 P.2d 296 (1967) (plaintiff's failure to prosecute case with reasonable diligence warrants its dismissal).

7. The RDSM motion for an award of future fees and expenses was denied. The fact-finder assigned to any subsequent application that may be filed by Aloha Express will be in a better position to determine whether, under the circumstances prevailing at that time, RDSM is entitled to an award of its fees and expenses. An award of fees and expenses at this time would be speculative.¹

¹ Notwithstanding the denial of this motion, Aloha Express is advised that its failure to prosecute this matter or to timely advise all concerned of its abandonment has resulted in additional expense and inconvenience to Commission personnel and to representatives of opposing parties. A pattern of behavior of this type on its part may result in an award of fees and expenses to opposing parties in future proceedings.

8. 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 this matter submitted by RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs, is granted.

2. The motion of RDSM Transportation, Ltd., doing business as Yellow Cab Company of Colorado Springs, for an award of fees and expenses it might incur in intervening in similar subsequent applications filed by Lei Faleao, doing business as Aloha Express, is denied.

3. The captioned application of Lei Faleao, doing business as Aloha Express, is dismissed.

4. Docket No. 04A-063CP is closed.

5. 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.

6. 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.

7. 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