

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

DOCKET NO. 04A-115CP

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IN THE MATTER OF THE APPLICATION OF EDWIN W. SIFFERLIN, DOING BUSINESS AS DENVER EXPRESS SHUTTLE, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING ORAL MOTION TO DISMISS,  
DISMISSING APPLICATION WITHOUT  
PREJUDICE, AND CLOSING DOCKET**

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Mailed Date: May 27, 2004

**I. STATEMENT, FINDINGS, AND CONCLUSIONS**

1. On May 15, 2004, Edwin W. Sifferlin, doing business as Denver Express Shuttle (Sifferlin or Applicant), filed an Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire (Application). The Application commenced this docket.

2. The Commission gave public notice of the Application. *See* Notice of Applications Filed dated March 22, 2004 (Notice) at 3. That Notice provides a detailed description of the territory which Applicant seeks to serve.

3. Golden West Commuter, LLC (Golden West), Nemarda Corporation, Metro Taxi, Inc. (Metro), and SuperShuttle International Denver, Inc. (SuperShuttle) (collectively, Intervenor), intervened of right. All Intervenor oppose the granting of the Application.

4. On April 23, 2004, the Commission issued its Order Setting Hearing and Notice of Hearing in this matter. The hearing was scheduled for May 24, 2004. By Decision No. R04-0514-I the undersigned Administrative Law Judge (ALJ) vacated the hearing and scheduled a prehearing conference for that date. Commission records show that, on May 19, 2004, a copy of the Order was mailed to Applicant at the address on file with the Commission.

5. Mr. Sifferlin did not file with the Application his direct testimony, a detailed summary of direct testimony, or a list of witnesses and copies of exhibits. As a result, and in accordance with the procedural schedule established by the Notice, Applicant's list of witnesses and copies of its exhibits were to be filed on or before May 3, 2004. *See* the Notice; *see also* Rule 4 *Code of Colorado Regulations* (CCR) 723-1-71(b)(4). Review of the Commission files revealed that, as of May 19, 2004, Mr. Sifferlin had filed neither a list of witnesses nor copies of exhibits. In addition, he had not requested an enlargement of time to make such a filing.<sup>1</sup>

6. On May 4, 2004, Metro filed a Motion to Consolidate Applications in the Event its Contemporaneously Filed Motion to Dismiss and for Other Relief is not Granted in Docket No. 04A-143CP and to Shorten Response Time. That motion, which requested consolidation of this proceeding with Docket No. 04A-143CP, was denied. *See* Decision No. R04-0516-I.

7. On May 4, 2004, Golden West filed a Motion to Dismiss and Alternate Motion *in Limine*, Motion for Postponement of Due Date for Filing Intervenor's Witness List and Exhibits, and Postponement of Hearing (Golden West Motion). Response to the Golden West Motion was due on or before May 18, 2004, and no response was filed.

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<sup>1</sup> Decision No. R04-0514-I vacated the then-existing procedural schedule and scheduled a prehearing conference to establish a new procedural schedule and a new hearing date.

8. On May 17, 2004, SuperShuttle filed a Motion to Limit Applicant's Evidence, to Dismiss Application, and to Shorten Response Time (SuperShuttle Motion).

9. On May 19, 2004, by Decision No. R04-0514-I, the ALJ denied the Golden West Motion and the SuperShuttle Motion but left open the possibility that the Application might be denied if a change in circumstances were to occur. *Id.* at ¶ I.13 & note 2.

10. In Decision No. R04-0514-I the ALJ, noting that Mr. Sifferlin appears *pro se* in this matter, was careful to call the parties' attention to Rule 4 CCR 723-1-79I(b)(4),<sup>2</sup> which was quoted *verbatim* in that Order. Decision No. R04-0514-I at ¶ I.18. In addition, the ALJ advised Applicant to obtain a copy of the Rules of Practice and Procedure, 4 CCR 723-1, and told him where he could obtain a copy of the rules. *Id.* at ¶ I.21.

11. Prior to the prehearing conference, Applicant did not contact the ALJ, the Commission, or the Commission Staff to request a change in the date or time of the prehearing conference. At no time has Applicant explained his failure to appear at the scheduled prehearing conference.

12. On May 24, 2004, pursuant to Decision No. R04-0514-I, the ALJ held the prehearing conference. Although scheduled to begin at 10 a.m. and although all Intervenors were present at 10 a.m., the ALJ delayed the start of the prehearing conference until 10:15 a.m. because Mr. Sifferlin was not present at the scheduled start time. When Mr. Sifferlin had not appeared by 10:15 a.m., the ALJ called the prehearing conference to order.

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<sup>2</sup> That rule states: "Failure of any person to attend the pre-hearing conference, after being served with notice of the date, time, and place, shall be a waiver of any objection to any agreement reached, or to any order or ruling made, at the pre-hearing conference."

13. At approximately 10:20 a.m., SuperShuttle orally moved to dismiss the Application for the failure of Mr. Sifferlin to appear, to respond to discovery, and to make the required filings in support of the Application. In support of this motion, SuperShuttle stated: (a) on May 21, 2004, Ms. Brandt, counsel for SuperShuttle, personally spoke with Mr. Sifferlin on the telephone;<sup>3</sup> (b) during that conversation Ms. Brandt informed Mr. Sifferlin of a meeting to be held on Monday, May 24, 2004, at 9:30 a.m. (in advance of the prehearing conference) to discuss a procedural schedule<sup>4</sup> and spoke with him about Decision No. R04-0514-I and the fact that a prehearing conference would occur on May 24, 2004; (c) based on her conversation, it is Ms. Brandt's opinion that Applicant had received Decision No. R04-0514-I, was aware of the contents of that Order, and was aware of the date and time of the prehearing conference; (d) as of the date of the prehearing conference, Applicant had not responded to discovery propounded by SuperShuttle or to that propounded by Golden West although those responses were long overdue; and (e) as of the date of the prehearing conference, Mr. Sifferlin had not made any filing required by Commission rule in support of the Application. Based on these circumstances, SuperShuttle argued that Mr. Sifferlin had abandoned the Application and that setting a new procedural schedule and a new hearing date would be fruitless and would waste the time of the Intervenor in light of Applicant's failure to participate in the proceeding to date.

14. Golden West and Metro joined the motion.

15. By the conclusion of the prehearing conference at approximately 10:40 a.m., Applicant had not appeared.

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<sup>3</sup> Ms. Brandt presented these facts at the prehearing conference.

<sup>4</sup> Decision No. R04-0514-I at ¶ I.20 & note 4 instructed the parties to discuss a procedural schedule in advance of the prehearing conference.

16. The oral motion to dismiss was granted at the prehearing conference. This decision memorializes that decision.

17. The Application will be dismissed for the failure of Mr. Sifferlin to prosecute this case. He had actual notice of the prehearing conference and failed to appear or to explain his failure to appear. He had actual knowledge of the consequences of failing to appear at the prehearing conference. He has made none of the filings required by Commission rules, and he has not responded to discovery propounded by two intervenors, thus hampering the ability of the Intervenor to prepare their cases. In short, Mr. Sifferlin has evidenced no interest in pursuing the Application. Under these circumstances, the ALJ finds that it would waste the Commission's time, would waste the Intervenor's time, and would increase Intervenor's litigation-related costs to keep this matter open.

18. Based on the foregoing, the ALJ finds and concludes that the motion to dismiss, to which Mr. Sifferlin has waived his right to object (*see* Rule 4 CCR 723-1-79(b)(4)), should be granted; that the Application should be dismissed without prejudice; and that Docket No. 04A-115CP should be closed.

19. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

## **II. ORDER**

### **A. The Commission Orders That:**

1. The oral motion to dismiss is granted.

2. The Application for a Certificate of Public Convenience and Necessity to Operate as a Common Carrier by Motor Vehicle for Hire, which application was filed by Edwin W. Sifferlin, doing business as Denver Express Shuttle, is dismissed without prejudice.

3. Docket No. 04A-115CP 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.

THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF COLORADO

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Administrative Law Judge