

Decision No. R04-0644-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-219CP

RDSM TRANSPORTATION. LTD., D/B/A YELLOW CAB COMPANY OF COLORADO
SPRINGS,

COMPLAINANT,

V.

SAMJA'S ENTERPRISES, INC., D/B/A EXPRESS AIRPORT TAXI/EXPRESS TAXI,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING OBJECTIONS TO
DISCOVERY, IN PART; DENYING
REQUEST FOR ENLARGEMENT
OF TIME TO RESPOND TO
DISCOVERY; ESTABLISHING DEADLINE
FOR RESPONDING TO REMAINING
DISCOVERY; DENYING REQUEST
FOR DISCOVERY SANCTIONS;
AND DENYING REQUESTS TO
DISMISS AND/OR HOLD PROCEEDING IN ABEYANCE**

Mailed Date: June 15, 2004

I. STATEMENT

1. The captioned proceeding was initiated on April 30, 2004, when the Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Formal Complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi).

2. On May 28, 2004, Express Taxi was granted until June 7, 2004, to submit objections to RDSM's Interrogatories and Requests for Production of Documents dated May 7, 2004 (RDSM Discovery). *See*, Decision No. R04-0572-I.

3. On June 7, 2004, Express Taxi submitted a pleading entitled "Objections to RDSM's Interrogatories and Requests for Production of Documents" (Objections). By that pleading Express Taxi objects to the RDSM Discovery on the ground that it is burdensome, oppressive, and that responding to the same would impose undue expense. The Objections also contend that that portion of the RDSM Discovery requesting the production of documents (Document Request) exceeds the time limitations imposed by Rule 77(c)(3) of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-77(c)(3).

4. On June 7, 2004, Express Taxi also filed its Answer to Formal Complaint (Answer). In addition to responding to the allegations contained in the Complaint, the Answer requests that this proceeding be dismissed or held in abeyance pending prosecution of a claim under the Colorado Antitrust Act of 1992 in the appropriate Colorado District Court.

5. On June 10, 2004, Express Taxi filed a pleading entitled "Motion to Establish Limits Upon Discovery by Complainant" (Motion for Discovery Limits). This pleading essentially restates the arguments contained in the Objections, requests that the Document Request be limited to the timeframes imposed by 4 CCR 723-1-77(c)(3), and requests that Express Taxi be granted until July 19, 2004, to provide discovery responses. The Motion for Discovery Limits also contends that RDSM should be precluded from requesting the production of documents from any source until it establishes that it has been damaged by Express Taxi's alleged failure to maintain insurance coverage on its vehicles. Finally, it requests that RDSM be

required to provide certain information concerning its vehicles and the insurance coverage relating thereto.

6. On June 11, 2004, RDSM filed a pleading entitled “Motion with Reference to Objections and Request for Specific Release (sic) Pertaining to Respondent’s Lack of Response to Discovery and Complainant’s Response to Respondent’s Motion to Establish Limits Upon Discovery by Complainant” (Motion/Response Regarding Objections). Among other things, this pleading requests that a default judgment be entered against Express Taxi as a result of its failure to respond to the RDSM Discovery and/or that discovery sanctions be imposed against it pursuant to 4 CCR 723-1-77(c)(4). In opposing the Motion for Discovery Limits, RDSM contends that the RDSM Discovery fully complies with 4 CCR 723-1-77.

7. On June 14, 2004, Express Taxi filed a Reply to the Motion/Response Regarding Objections. That pleading does not raise any additional arguments not previously raised by the pleadings summarized above.

8. The Objections will be granted, in part. A review of Document Request Nos. 1, 2, 4, 5, 7, and 8 reveal that they seek production of documents outside the timeframes allowed by 4 CCR 723-1-77(c)(3). The Complaint was filed on April 30, 2004. As a result, the Document Request must be limited to any six-month period within the timeframe commencing on May 1, 2003 and ending on April 30, 2004. Document Request Nos. 1, 2, 4, and 5 seek documents covering a period of four years. Document Request Nos. 7 and 8 seek documents covering a one-year period, but fail to specify which six-month period within that year are at issue. Therefore, Express Taxi will not be required to produce the documents requested in Document Request Nos. 1, 2, 4, 5, 7, and 8.

9. The remaining RDSM Discovery is relevant to the issues raised in the Complaint or is reasonably calculated to lead to the discovery of admissible evidence. The Objections do not contend that the RDSM Discovery requires production of privileged information. Responding to the remaining RDSM Discovery will not be burdensome or oppressive. Nor will it impose undue expense on Express Taxi. Therefore, Express Taxi shall respond to the remaining RDSM Discovery within ten days of the date of this Order. Express Taxi's request for an enlargement of time, through and including July 19, 2004, to respond to the subject discovery will be denied.

10. The request set forth in the Motion for Discovery Limits that RDSM be precluded from requesting the production of documents from any source until it establishes that it has been damaged by Express Taxi's alleged failure to maintain insurance coverage on its vehicles will be denied. Applicable law provides that the Commission is not required to dismiss a complaint because of the absence of direct damage to the complainant. *See*, § 40-6-108(1)(d), C.R.S., and 4 CCR 723-1-61(d)(8).

11. The request set forth in the Motion for Discovery Limits that RDSM be required to provide certain information concerning its vehicles and the insurance coverage relating thereto will be denied. Express Taxi is free to direct discovery requests to RDSM seeking this information.

12. The request set forth in the Motion/Response Regarding Objections that a default judgment be entered against Express Taxi as a result of its failure to respond to the RDSM Discovery and/or that discovery sanctions be imposed against it will be denied as

premature. RDSM may renew this request in the event Express Taxi fails to adequately respond to the remaining RDSM Discovery in accordance with the provisions of this Order.

13. The request set forth in the Answer that this proceeding be dismissed or held in abeyance pending prosecution of a claim under the Colorado Antitrust Act of 1992 will be denied. Express Taxi is free to pursue these claims in the appropriate forum. However, the Complaint alleges that Express Taxi has failed to comply with various aspects of Colorado public utility law. These matters are within the Commission's jurisdiction and are independent of any potential RDSM anti-trust violations.

II. ORDER

A. It Is Ordered That:

1. The Objections to Complainant RDSM Transportation, Ltd., doing business as Yellow Cab Company's Interrogatories and Requests for Production of Documents filed by Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, are granted, in part, consistent with the provisions of this Order.

2. The Motion to Establish Limits Upon Discovery by Complainant filed by Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi is granted and/or denied consistent with the provisions of this Order.

3. Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, shall respond to the remaining RDSM Transportation, Ltd., doing business as Yellow Cab Company's Discovery within ten days of the date of this Order.

4. The Motion with Reference to Objections and Request for Specific Release (sic) Pertaining to Respondent's Lack of Response to Discovery and Complainant's Response to

Respondent's Motion to Establish Limits Upon Discovery by Complainant filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is denied.

5. The request of Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, that this proceeding be dismissed or held in abeyance pending prosecution of a claim under the Colorado Antitrust Act of 1992 is denied.

6. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge