

Decision No. R04-0703

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-155CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

D D TAXI, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
KEN F. KIRKPATRICK
ASSESSING CIVIL PENALTY**

Mailed Date: June 23, 2004

Appearances:

John Opeka, Denver, Colorado, for the Staff of the Commission;
and

William Miller, President, D D Taxi, Inc, Carbondale, Colorado.

I. STATEMENT

1. This proceeding was instituted by the issuance of Civil Penalty Assessment Notice (CPAN) No. 28547. The CPAN alleged one violation of § 40-6-104, C.R.S., operating without insurance, and sought a penalty of \$11,000. By Order and Notice dated April 26, 2004, the matter was set for a hearing to be held on June 15, 2004 in Glenwood Springs, Colorado. At the assigned place and time the undersigned called the matter for hearing. As a preliminary matter the Respondent D D Taxi, Inc. (D D Taxi) admitted liability and sought only to introduce

testimony in mitigation concerning the civil penalty to be assessed. The matter then proceeded to hearing.

2. 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 AND CONCLUSIONS

3. William Miller is the president and sole shareholder of D D Taxi. Miller originally started D D Taxi as a sole proprietorship and then incorporated in January of 2004. Miller runs essentially a one-person operation, offering taxicab service primarily in and around the Glenwood Springs and Carbondale area. He operates under the authority of Certificate of Public Convenience and Necessity PUC No. 55722.

4. Miller obtained insurance for D D Taxi, paying a full year's premium with funds obtained through a finance company, and then was paying off the loan to the finance company every month. Nonetheless, his insurance was canceled for reasons he does not understand. Miller has filed an informal complaint with the Insurance Commission about the cancellation. While he was attempting to get his insurance reinstated he continued to operate for several weeks until he did eventually get insurance coverage.

5. Miller accepts that he was wrong to operate without insurance and is contrite. He has testified that he will not do so in the future and that he made a mistake. D D Taxi is currently operating near the breakeven point, with monthly revenues running about \$3000. *See* Exhibits 5 and 6.

6. Staff of the Commission (Staff) supports a reduced penalty in view of the Respondent's acceptance of liability, as well as its willingness to abide by other Commission rules. This willingness has been demonstrated by the Respondent making corrections to recordkeeping as requested by Staff pursuant to various audits.

7. Miller has been attempting to follow Commission rules. He made a mistake and he realizes this. This is his first violation and it is a serious one, particularly continuing to operate. Nonetheless, as a start-up company with monthly revenues of approximately \$3,000, a penalty in the amount of \$11,000 or even \$5,000 would effectively put the Respondent out of the business to the detriment of the traveling public. Therefore the Administrative Law Judge will assess a penalty in the amount of \$3,000. However, \$2,000 of this penalty will be suspended provided the Respondent maintains continuous insurance coverage for the next 12 months. Respondent shall pay \$1,000 within ten days of the effective of this order.

8. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order

III. ORDER

A. The Commission Orders That:

1. D D Taxi, Inc., Carbondale, Colorado, is assessed a civil penalty in the amount of \$3,000 for failure for operating without insurance on February 16, 2004. Two thousand dollars of the penalty shall be suspended, provided that D D Taxi, Inc., maintains continuous insurance coverage for as long as it operates over the next 12 months. D D Taxi, Inc., shall pay a civil penalty in the amount of \$1,000 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