

Decision No. R04-0849-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 MOTION TO MODIFY
INTERIM ORDER, IN PART;
DENYING MOTION FOR SANCTIONS,
IN PART; AND HOLDING PORTIONS
OF MOTION FOR SANCTIONS
IN ABEYANCE PENDING
PRODUCTION OF DOCUMENTS**

Mailed Date: July 23, 2004

I. STATEMENT

1. On July 16, 2004, Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Motion for Sanctions in the captioned matter. The Motion for Sanctions requests that sanctions be imposed against Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi), in connection with various outstanding discovery directed to it by RDSM. Express Taxi filed its Response to the Motion for Sanctions on July 19, 2004.

2. On July 20, 2004, Express Taxi filed a pleading entitled “Motion Under 4 CCR 723-1-3” (Motion to Modify). The Motion to Modify will be construed as a request to modify portions of Decision No. R04-0735-I pursuant to 4 *Code of Colorado Regulations* (CCR) 723-1-86(b)(2). Response time to the Motion to Modify was shortened to July 23, 2004. *See*, Decision No. R04-0802-I. RDSM filed a Response to the Motion to Modify on July 21, 2004.

3. Paragraphs 8 and 9 of Decision No. R04-0735-I ordered Express Taxi to produce its driver trip sheets and dispatch records during the period of October 1, 2003 through March 31, 2004 (Discovery) subject to the confidentiality provisions of 4 CCR 723-16.¹ Express Taxi has not yet produced the Discovery. In its Motion to Modify, it contends that the conditions under which it has been ordered to produce the Discovery does not adequately protect the confidential and proprietary information allegedly contained therein. It requests that RDSM be required to retain an independent C.P.A. to review the Discovery for the purpose of compiling a listing of cabs and dates of operations shown therein; information that Express Taxi deems to be non-proprietary.

4. In its Response to the Motion to Modify RDSM disputes that the Discovery contains confidential or proprietary information.² However, it expresses a willingness to allow certain information to be redacted from the Discovery; namely, pickup and destination addresses, names of passengers, and telephone numbers.

¹ RDSM’s counsel, Mr. Kaiser, and its designated representative, Mr. Kamans, have executed the Nondisclosure Agreement required by Decision No. R04-0735-I. It was filed with the Commission on July 7, 2004.

² In Decision No R04-0735-I the undersigned Administrative Law Judge found that these records do contain confidential information.

5. The Administrative Law Judge (ALJ) agrees with RDSM that the remedies afforded by 4 CCR 723-16 adequately protect Express Taxi from the improper use of any confidential information that may be contained in the Discovery. However, given RDSM's willingness to allow the above-described information to be redacted from these records, the Motion to Modify will be granted, in part. Paragraph 9 of Decision No. R04-0735-I will be modified as described in paragraph 6 below and Express Taxi will be provided one final opportunity to produce the Discovery within ten days of the effective date of this Order. No other portion of Decision No. R04-0735-I will be modified.

6. Paragraph 9 of Decision No. R04-0735-I will be modified to read as follows:

Production of the Discovery may occur in one of two ways. Express Taxi may either redact the pickup and destination addresses, names of passengers, and telephone numbers from the Discovery, make legible copies of the redacted documents itself, and supply them to RDSM's counsel, or it may make such documents available (in un-redacted form) for inspection and copying by RDSM's counsel or RDSM's designated representative at its premises during normal business hours. In either event, production will be conditioned on Express Taxi being reimbursed by RDSM for any copying costs incurred at the rate of \$.20 per page.

7. That portion of the Motion for Sanctions requesting that sanctions be imposed against Express Taxi as a result of its failure to produce the Discovery under the original terms of Decision No. R04-0735-I will be held in abeyance pending Express Taxi's production of the same under the terms of this Decision No. R04-0849-I. In the event the Discovery is not so produced, RDSM shall file a written advisement with the Commission to that effect and the ALJ will proceed to issue a ruling in connection with this portion of the Motion for Sanctions.

8. The Motion for Sanctions also requests that sanctions be imposed against Express Taxi as a result of: (a) its failure to produce pleadings filed in El Paso County Court Civil Action

No. 02CV2544 seeking to set aside a default judgment entered therein; and/or (b) its failure to produce documents relating to Mr. Elsrode's ownership interest in Express Taxi.

9. In its Response to the Motion for Sanctions, Express Taxi indicates that no pleadings were filed in the subject El Paso County Court civil action seeking to set aside a default judgment. It has, therefore, responded to this discovery request. RDSM may review the applicable court records on its own to determine whether any such pleadings have been filed. The Motion for Sanctions will, therefore, be denied to the extent it is based on Express Taxi's failure to produce pleadings filed in El Paso County Court Civil Action No. 02CV2544 that seek to set aside a default judgment entered therein.

10. In its Response to the Motion for Sanctions, Express Taxi indicates that it is not in possession of documents relating to Mr. Elsrode's ownership interest in Express Taxi. It indicates that Express Taxi's former legal counsel, Ms. Seal, may possess these documents. Express Taxi has, therefore, responded to this discovery request. RDSM may exercise whatever efforts it deems necessary to secure the subject documents from Ms. Seal if it so desires. The Motion for Sanctions will, therefore, be denied to the extent it is based on Express Taxi's failure to produce documents relating to Mr. Elsrode's ownership interest in Express Taxi.

II. ORDER

A. It Is Ordered That:

1. The Motion Under 4 CCR 723-1-3 filed by Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, is granted, in part, consistent with the provisions of this Order.

2. Those portions of the Motion for Sanctions filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, discussed in Section I, Paragraphs 8 through 10 of this Order are denied.

3. That portion of the Motion for Sanctions filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, discussed in Section I, Paragraph 7 of this Order will be held in abeyance pending the production by Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, within ten days of the effective date of this Order, of its driver trip sheets and dispatch records during the period of October 1, 2003 through March 31, 2004, under the terms of Section I, Paragraph 6 of this Order.

4. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge