

Decision No. R04-0918-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
DENYING MOTION FOR DISCOVERY
SANCTIONS AND FOR ORDER
CONTINUING DEPOSITION**

Mailed Date: August 5, 2004

I. STATEMENT

1. On July 28, 2004, Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Motion for Sanctions (Sanctions Motion) and for an Order Continuing the Deposition of Earl Elsrode to a Date Certain (Deposition Motion) in the captioned matter.

2. The Sanctions Motion requests that sanctions be imposed against Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi), in connection with certain discovery directed to it by RDSM. The Deposition Motion requests that

that the Commission order Earl Elsrode, Express Taxi's President, to appear at a deposition scheduled for August 9, 2004.

3. Responses to the subject motions would ordinarily be due on August 11, 2004. *See, 4 Code of Colorado Regulations (CCR) 723-1-22(b).* However, since the Deposition Motion requests Mr. Elsrode's appearance two days prior to that time, response time to both the Sanctions Motion and the Deposition Motion will be waived. *See, 4 CCR 723-1-22(b)* (Commission may waive response time and act on a pleading notwithstanding the provisions permitting a responsive pleading when time is of the essence).

4. The Sanctions Motion contends that Express Taxi has failed to properly respond to two RDSM interrogatories and to questions posed to Mr. Elsrode at his July 19, 2004, deposition in connection with those interrogatories. The first interrogatory, served on May 7, 2004, seeks a description of vehicles used by Express Taxi in its current passenger carrier operations under Certificate No. 55670. The second interrogatory, served on June 15, 2004, seeks a listing of leased and owned vehicles Express Taxi operated during the period of October 1, 2003, through March 31, 2004.

5. Express Taxi responded to these interrogatories in writing on July 19, 2004, by referring to a list of its equipment, a copy of which was attached to the Sanctions Motion as Exhibit A, and by confirming that the list "included" the vehicles operated by Express Taxi during the period in question. At his deposition, Mr. Elsrode was able to identify nine of the vehicles shown on Exhibit A that were actually operated by Express Taxi during the subject period. *See, Exhibit B to the Sanctions Motion.*

6. RDSM contends that Express Taxi's responses to these interrogatories, both in writing and through Mr. Elsrode, are insufficient since they fail to specify which particular

Express Taxi vehicles were being operated during the subject period. However, it appears that Mr. Elsrode answered this inquiry to the best of his ability at his deposition when he identified the nine vehicles shown on Exhibit B. Therefore, the Sanctions Motion will be denied.¹

7. The Deposition Motion will also be denied. In the absence of issuing a subpoena, the Commission has no authority to order a person to appear to testify at a deposition. RDSM has not requested the issuance of a subpoena compelling Mr. Elsrode's appearance at a deposition on August 9, 2004, and the subpoena issued in connection with Mr. Elsrode's July 19, 2004, deposition made no reference to being "continuing" in nature.²

II. ORDER

A. It Is Ordered That:

1. Response time to the Motion for Sanctions and for an Order Continuing the Deposition of Earl Elsrode to a Date Certain filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is waived.

2. The Motion for Sanctions and for an Order Continuing the Deposition of Earl Elsrode to a Date Certain filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is denied.

3. This Order shall be effective immediately.

¹ Of course, RDSM may be able to impeach this testimony by producing evidence at the hearing that Express Taxi operated different vehicles during this period.

² Neither Express Taxi nor Mr. Elsrode objected to the issuance of, or moved to quash, the subpoena issued in connection with the July 19, 2004, deposition notwithstanding the prohibition against the taking of party depositions contained in 4 CCR 723-1-77(c)(1).

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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