

Decision No. R04-0930

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-053EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

GENERO THOMATOS,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ASSESSING CIVIL PENALTY**

Mailed Date: August 11, 2004

Appearances:

John J. Roberts, Assistant Attorney General for Staff of the Public
Utilities Commission; and

Genero Thomatos, Respondent (*pro se*).

I. STATEMENT

1. Complainant, Staff of the Public Utilities Commission (Staff) issued Civil Penalty Assessment (CPAN) No. 28741 to Genero Thomatos (Respondent).

2. Respondent was charged with one violation of operating a luxury limousine without insurance contrary to § 40-16-104, C.R.S., and one violation of failing to register with the Public Utilities Commission contrary to § 40-16-103, C.R.S. The date of the alleged violations is January 31, 2004. Respondent was personally served with CPAN No. 28741.

3. On February 18, 2004, Staff's attorney filed an Entry of Appearance.

4. The Commission scheduled a hearing on this matter for March 15, 2004. Staff filed several unopposed motions to continue the hearing which were granted. The hearing was held on August 2, 2004. On this date, testimony was received from witnesses and Exhibit Nos. 1 through 3 were marked for identification and admitted into evidence.

5. As a preliminary matter, the Motion in Limine filed by Staff on July 26 was granted, precluding Respondent from presenting any evidence of any insurance policy allegedly effective on January 31, 2004.

6. Pursuant to § 40-6-109, C.R.S., the record and exhibits of the proceeding together with a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. In November 2003, the Manager of Transportation at Denver International Airport contacted John Opeka, of Staff. The contact and subsequent investigation by Staff resulted in CPANs issued to Lawrence Torrez, doing business as Absolutely Devine Limousines.

8. On or about January 5, 2004, Mr. Opeka and Mr. Munoz of Staff were at the Pepsi Center. On that date, Mr. Munoz arranged transportation from the Pepsi Center to another location in Denver with the Respondent, Genero Thomatos. Respondent was driving a luxury limousine as an independent contractor for Absolutely Devine Limousines. The transportation was provided for a fee of \$128, which was paid by Mr. Munoz to Respondent.

9. Having previously determined that the luxury limousine was not registered with the Commission as required by § 40-16-103, C.R.S., and that neither Absolutely Devine Limousines nor Mr. Thomatos had proper insurance as required by § 40-16-104, C.R.S., Mr. Opeka issued a violation warning to Mr. Thomatos. (Exhibit No. 1).

10. Mr. Opeka testified that during the course of checking luxury limousine carriers at Cherry Creek High School in Arapahoe County, on January 31, 2004, he observed an Absolutely Devine Limousine transporting persons in the vicinity of the high school. Mr. Opeka contacted the driver of the limousine with the assistance of the Greenwood Village Police Department. Mr. Opeka testified that the driver of the Absolutely Devine Limousine was Respondent. As a result of this contact, Mr. Opeka charged Respondent with one violation of § 40-16-104, C.R.S., (no insurance), with a civil penalty of \$11,000 and one violation of § 40-16-103, C.R.S., no registration with the Commission, with a penalty of \$1,100. (See CPAN No. 28741, Exhibit No. 3.)

11. Mr. Opeka stated that after an investigation of the matter, the Commission records showed that neither Absolutely Devine Limousine nor Respondent was registered with the Commission and no insurance policy was on file with the Commission on the date of the alleged violations, January 31, 2004.

12. Subsequent to the issuance of the CPAN to Respondent, Mr. Opeka testified that Lawrence Torrez contacted Mr. Opeka and informed him that he had insurance. On or about February 17, 2004, a Form E (Exhibit No. 2) was filed with the Commission purportedly showing that Absolutely Devine Limos had insurance with American & Foreign Insurance Company. On the face of the Form E, it appears that the insurance policy was effective from September 29, 2003 through September 29, 2004. Mr. Opeka, however, became suspicious of the filing and contacted the insurance company, American and Foreign Insurance Company. Mr. Opeka talked to several persons at the insurance company, and he was informed that the insurance policy was not legitimate, and in fact, the insurance company did not issue the insurance policy.

13. Ilene Zschoche, the Operations Manager of the parent company of American and Foreign Insurance Company testified that the Form E (Exhibit No. 2) filed with the Commission by Lawrence Torrez, doing business as Absolutely Devine Limousines is not a valid certificate, and that American and Foreign Insurance Company did not issue the policy.

14. Ms. Zschoche testified that she is familiar with the Form E insurance certificates required by this Commission. Referring to Exhibit No. 2, she pointed out at least eight discrepancies on Exhibit No. 2 from a valid Form E filing issued by her insurance company that would certify that a motor carrier has a valid policy with the company. For example, she stated that the policy number on the face of Exhibit No. 2 is not a proper policy number issued by the company since all of the company's policy numbers start with the letter A rather than G as found in Exhibit No. 2. She also indicated that the policy number has too many numbers. The witness further stated that the address of American and Foreign Insurance Company stated on the Exhibit No. 2 of Jamestown, New York is erroneous since the company does not have an office in this city. The authorized company representative shown on Exhibit No. 2, Rocky Johnson is not an employee of the insurance company. Ms. Zschoche testified that after searching the records of the insurance company, the records do not show that a policy was issued to Respondent or to Lawrence Torrez, doing business as Absolutely Devine Limos.

15. The uncontroverted evidence of record establishes that Staff has sustained its burden to establish that Respondent on January 31, 2004 violated §§ 40-16-103 and 40-16-104, C.R.S.

16. Section 40-16-103, C.R.S., requires that any person who offers services as a luxury limousine or other motor vehicle carrier classified as being exempt from regulation as public utilities must register with this Commission. Complainant has established that

Respondent offered luxury limousine transportation on the public highways of this state for compensation without being properly registered with this Commission and therefore is found to be in violation of § 40-16-103, C.R.S.

17. Complainant has also established that Respondent has violated § 40-16-104, C.R.S., by not having insurance on file with this Commission. Section 40-16,104, C.R.S., requires that every motor vehicle carrier exempt from regulation as a public utility is required to maintain a general liability insurance policy. The record shows that no valid insurance policy existed on the date of the offense.

18. The record establishes that Respondent was given a violation warning of the violations of the registration and insurance provisions prior to the issuance of the CPAN. Notwithstanding the warning, Respondent continued to provide luxury limousine service to the public.

19. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Genero Thomatos is found to be in violation of §§ 40-16-103 and 40-16-104,, C.R.S., as charged in Civil Penalty Assessment Notice No. 28741 and is assessed a total civil penalty in the amount of \$12,100.

2. Genero Thomatos shall remit to the Public Utilities Commission the amount of \$12,100 within 30 days of the effective date of this Recommended Decision.

3. 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.

4. 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.

5. 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

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