

Decision No. R04-0987-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 TO DISMISS
AND/OR FOR SANCTIONS**

Mailed Date: August 20, 2004

I. STATEMENT

1. On August 16, 2004, Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Motion to Dismiss and/or for Sanctions Pursuant to Rule 71(b)(5)(B)6(7) (Motion) in the captioned matter.

2. The Motion requests that the pleadings previously submitted by the Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi), be dismissed and that judgment be entered in favor of RDSM as a result of Express Taxi's failure to file its witness/exhibits list on August 13, 2004.

3. On August 17, 2004, the deadline for submitting a response to the Motion was shortened to August 19, 2004. *See*, Decision No. R04-0970-I. On that date, Express Taxi filed a pleading entitled “Answer to Complainant’s Motion to Dismiss and/or for Sanctions” (Answer) through its President, Earl E. Elsrode.

4. The procedural schedule governing this case required Express Taxi to file its list of witnesses and copies of exhibits on August 13, 2004, ten days before the hearing was to commence. *See*, Decision No. R04-0619-I. Consistent with the procedures established by Rule 72(a)(7) of the Commission’s Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1-72(a)(7), that decision advised Express Taxi that no witness would be permitted to testify and no exhibit would be received in evidence at the hearing, except in rebuttal, unless filed and served in accordance with this requirement.

5. A review of the Commission’s files reveals that Express Taxi did not make the above-described witness/exhibit list filing on the required due date and the Answer does not contend that such a filing was made. Rather, it indicates that Express Taxi does not have the financial ability to “call witnesses, take depositions and produce voluminous records.” It also indicates that Express Taxi intends to “rely on the exhibits already on file with the commission” and that its only witness at hearing will be Mr. Elsrode.

6. At the time Decision No. R04-0619-I was issued, Express Taxi was represented by legal counsel, Kenneth R. Nuss, Esq. However, the Administrative Law Judge approved Mr. Nuss’ request to withdraw as Express Taxi’s counsel on August 3, 2004, ten days before its witness/list was due.

7. Rule 72(b)(1) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-72(b)(1), suggests that the procedures set forth in Rule 72(a) should not be strictly construed

against *pro se* parties. It indicates that motions to dismiss based upon such a party's failure to comply with those provisions should not ordinarily be granted. For this reason, the Motion will be denied. However, at the hearing of this matter Express Taxi will, in addition to the evidentiary limitations imposed by Decision No. R04-0919-I, be precluded from calling any witness to testify other than Mr. Elsrode or offering any exhibit into evidence other than those previously submitted by RDSM.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss and/or for Sanctions Pursuant to Rule 71(b)(5)(B)6(7) filed by Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company is denied.

2. At the hearing of this matter, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express, will be precluded from calling any witness to testify other than Mr. Earl E. Elsrode and, further, will be precluded from offering any exhibit into evidence other than those previously submitted by RDSM Transportation, Ltd., doing business as Yellow Cab Company.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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