

Decision No. R04-1081

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04C-461-INS

IN RE: THE MATTER OF MOTOR VEHICLE COMMON AND CONTRACT CARRIERS
LISTED ON APPENDIX A TO THIS DECISION, RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
DISMISSING CASE NOS. 07111-INS AND 07112-INS;
CONTINUING CASE NOS. 07125-INS THROUGH
07129-INS; AND REVOKING AUTHORITIES
PURSUANT TO ORDER TO SHOW CAUSE**

Mailed Date: September 17, 2004

I. STATEMENT

1. The cases listed on the attached Appendix A were instituted by Notice of Hearing and Order to Show Cause issued by the Commission Director and served upon the Respondents on August 23, 2004. The cases were called for hearing on September 13, 2004, at 8:30 a.m., in Commission Hearing Room "B," Office Level 2 (OL2), Logan Tower, 1580 Logan Street, Denver, Colorado, before Administrative Law Judge (ALJ) Dale E. Isley.

2. Ms. Jonelle Poley, Program Assistant I and Ms. Raenette Salazar, Administrative Assistant III appeared and testified on behalf of Staff of the Commission. Mr. Howard Davey appeared on behalf of Owner/Driver United Corporation, doing business as Blue Sky Shuttle (Blue Sky), in Case Nos. 07125-INS through 07129-INS. None of the other Respondents listed on Appendix A appeared at the hearing. An appearance was also entered by Mr. Duane Kamins, a representative of RDSM Transportation, Ltd., doing business as Yellow Cab Company of

Colorado Springs (RDSM), in connection with Case No. 07111-INS involving Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Express (Express Taxi).

3. Pursuant to § 40-6-109, C.R.S., the Administrative Law Judge transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

II. STATEMENT, FINDINGS, AND CONCLUSIONS

4. Pursuant to § 40-10-110, C.R.S., and the rules and regulations of the Commission, every motor vehicle carrier of passengers (common carrier) must keep a currently effective Certificate of Insurance on file with the Commission.

5. Pursuant to § 40-11-109, C.R.S., and the rules and regulations of the Commission, every contract carrier of passengers by motor vehicle must keep a currently effective Certificate of Insurance on file with the Commission.

6. Pursuant to § 40-13-105, C.R.S., and the rules and regulations of the Commission, every towing carrier must keep a currently effective Certificate of Insurance or bond on file with the Commission documenting both cargo liability insurance and garage keepers liability insurance.

7. Pursuant to § 40-16-104, C.R.S., and the rules and regulations of the Commission, every property carrier by motor vehicle and every other motor vehicle carrier exempt from regulation as a public utility must keep a currently effective Certificate of Insurance on file with the Commission.

8. At the hearing, Mr. Davey explained that Blue Sky's insurance underwriter was located in the State of Florida and, as a result of the recent hurricane activity in that area, had been unable to timely file evidence of Blue Sky's insurance coverage with the Commission. As a

result, he requested additional time, through October 4, 2004, to make these filings. He emphasized that Blue Sky had discontinued operations on September 3, 2004, the last day it had evidence of effective insurance on file with the Commission, and that it would not resume such operations unless and until the necessary insurance filings were made. Accordingly, Blue Sky's request to continue Case Nos. 07125-INS through 07129-INS was granted.

9. At the hearing, Ms. Rodriquez requested that Case No. 07111-INS involving Express Taxi and Case No. 07112-INS involving Timberline Transportation Services, Inc. (Timberline), be dismissed by virtue of recent filings made by these entities to suspend operations under their respective operating authorities commencing on the expiration date of their respective insurance coverage. *See*, Docket Nos. 04A-447CP and 04A-444CP.

10. RDSM objected to the dismissal of Case No. 07111-INS based on its contention that the Express Taxi representative who submitted the suspension application had no legal authority to do so. RDSM indicated that it had filed a request to intervene in the Express Taxi suspension application (Docket No. 04A-447CP) along with a motion to dismiss the same on that basis. The ALJ granted Staff's request to dismiss Case No. 07111-INS at this time, indicating that the arguments raised by RDSM are more appropriately raised in the Express Taxi suspension proceeding.

11. The Commission's records do not show a currently effective Certificate of Insurance for each of the remaining Respondents listed in Appendix A.

12. The Commission's only means of performing the important health and safety function of guaranteeing that persons who hold authority from the Commission have current, effective insurance is to have documentation of that fact furnished in uniform format to the Commission. The responsibility for furnishing that information is on the holder of the authority.

13. With the exceptions of Blue Sky, Express Taxi and Timberline, the Respondents listed on Appendix A failed to appear for the hearing as ordered by the Commission and have not shown good cause for that failure.

14. Sections 40-10-112, 40-11-110, and 40-13-109, C.R.S., and the Commission's rules and regulations implementing those sections, provide that an authority issued by the Commission may be suspended, revoked, altered, or amended if it is established to the satisfaction of the Commission that the holder of that authority has violated any applicable statute, or any rule, regulation, or order of the Commission. Section 40-16-103, C.R.S., requires the Commission to revoke the Article 16 registration of any person who fails to comply with the insurance requirements of the article.

15. Because the Respondents listed in Appendix A have failed to keep a currently effective Certificate of Insurance on file with the Commission, the authorities listed in Appendix A (except for the authorities held by Blue Sky, Express Taxi and Timberline) should be revoked.

III. ORDER

A. The Commission Orders That:

1. Case No. 07111-INS involving Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Express, is dismissed.

2. Case No. 07112-INS involving Timberline Transportation Services, Inc, is dismissed.

3. The request of Owner/Driver United Corporation, doing business as Blue Sky Shuttle, to continue Case Nos. 07125-INS through 07129-INS until October 4, 2004, is granted.

4. Except for the operating authorities of Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Express, Timberline Transportation Services, Inc, and Owner/Driver United Corporation, doing business as Blue Sky Shuttle, the operating authorities of the Respondents listed in Appendix A are revoked as of the effective date of this Order.

5. Ordering paragraph no. 4 shall be void and the case dismissed as to any Respondent who files the required Certificate of Insurance before the effective date of this Order.

6. 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.

7. 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.

8. 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