

Decision No. R04-1148

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-156EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ROBERT ENTRUP, AMERICAN BUS RIDE, INC., DOING BUSINESS AS BOOGIE BUS,
AMERICAN CHARTERS, AAAA AMICA BUS COMPANY, LIMOLINER, AND A. AABLE
RENTS, INC.,

RESPONDENT.

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

Mailed Date: October 1, 2004

Appearances:

David N. Nocera and Michael J. Santisi, Assistant Attorneys
General for Staff of the Colorado Public Utilities Commission; and

Robert Entrup (*Pro Se*), Respondent.

I. STATEMENT

1. On March 30, 2004, the Public Utilities Commission of the State of Colorado (Complainant) served Civil Penalty Assessment Notice (CPAN) No. 28027 on Robert Entrup, American Bus Ride, Inc., doing business as Boogie Bus, American Charters, AAAA Amica Bus Company, Limoliner, and A. Aable Rents, Inc. (Respondent).

2. Complainant charged Respondent with 15 violations alleged to have occurred between July 6, 2003 and February 21, 2004, all contained in CPAN No. 28027 (Exhibit No. 4) as follows:

1. Failure to register with the Commission in violation of § 40-16-103, C.R.S., date of violation (DOV) July 12, 2003
2. Failure to maintain insurance in the required amount contrary to § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: July 6, 2003
3. Failure to file proof of insurance with the Commission in violation of § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: July 6, 2003
4. Failure to register with the Commission contrary to § 40-16-103, C.R.S., DOV: August 30, 2003
5. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: August 30, 2003
6. Failure to provide proof of insurance contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: August 30, 2003
7. Failure to register with the Commission contrary to § 40-16-103, C.R.S., DOV: August 30, 2003
8. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: August 30, 2003
9. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: August 30, 2003
10. Failure to maintain registration with the Commission contrary to § 40-16-103, C.R.S., DOV: January 31, 2004
11. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: January 31, 2004
12. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2, DOV: January 31, 2004
13. Failure to maintain registration with the Commission contrary to § 40-16-103, C.R.S., DOV: February 21, 2004
14. Failure to maintain insurance in the required amount in violation of § 40-16-104(1)(a), C.R.S., and 4 CCR 723-33-3.1.1, DOV: February 21, 2003 and

15. Failure to maintain proof of insurance with the Commission contrary to § 40-16-104(2), C.R.S., and 4 CCR 723-33-3.1.2. DOV: February 21, 2004.
3. The total stated penalty of CPAN No. 28027 is \$89,200.
4. The case was heard on August 12, 2004. Testimony was received from witnesses and Exhibit Nos. 1 through 9 were marked for identification and admitted into evidence. As a preliminary matter, Staff of the Commission (Staff) moved to dismiss Charge Nos. 2, 5, 8, 11, 13, and 14. The motion was granted. Staff moved to amend Charge No. 1 to reflect the correct date of violation as July 12, 2003. The motion was granted. Respondent acknowledged liability of Charge Nos. 3, 6, 9, 12, and 15. Respondent elected to contest Charge Nos. 1, 4, 7, and 10. The hearing proceeded on these charges of failure to register with the Commission.
5. At the conclusion of the hearing, the matter was taken under advisement.
6. Pursuant to § 40-6-109, C.R.S., the record of the hearing and a written recommended decision are transmitted to Complainant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

7. Manual Rodriguez testified that During July of 2003, he contacted Respondent to order charter bus service for July 12, 2003. He requested that Respondent pickup Mr. Rodriguez and his friends in Denver and for the bus driver to drive the group “around town.” Mr. Rodriguez testified that he gave Robert Entrup \$350 as a partial deposit on July 10, 2003 as indicated in Exhibit No. 2. On July 12, 2003, Mr. Rodriguez tendered the remaining \$350 to the bus driver in full payment for the charter. Mr. Rodriguez stated that on July 12, 2003, Respondent picked up Mr. Rodriguez and his friends and the bus driver proceeded to take the group to one place only. Mr. Rodriguez testified that he and his group wanted the driver to take him to other places in Denver, however, the driver refused as he considered the group to be

intoxicated. Mr. Rodriguez testified that he received no refund of the charter fee. This episode resulted in Complainant charging Respondent with Charge No. 1 of CPAN No. 28027.

8. John Opeka, of Staff testified that he conducted an investigation of Boogie Bus upon receiving several complaints. He stated that in May 2003, he contacted three of Respondent's drivers at the Cherry Creek High School Prom. Mr. Opeka stated that after contacting the Respondent's drivers, three of the drivers produced an insurance card containing the name of an insurance company, American National Indemnity. Mr. Opeka testified that he contacted the Colorado Insurance Division and found that American National Indemnity was not licensed to provide insurance in Colorado. He also checked the Commission's records and found that Respondent had no proof of insurance on file with the Commission.

9. During the month of August 2003, Mr. Opeka had contacts with some people who had used Respondent's charter service. Exhibit No. 5 is an affidavit of Kendall D. Fugate who stated that during August 2003, he hired a bus service to transport a group of friends and himself from 21st and Lafayette Streets in Denver to Invesco Field at Mile High for the University of Colorado/Colorado State University (UC/CSU) football game. Mr. Fugate stated that he called Respondent, Boogie Bus and spoke with Robert Entrup. Mr. Entrup advised Mr. Fugate that the charge for a bus to transport the group, including a 20 percent gratuity for the bus driver, was \$900. A \$300 deposit was mailed to Mr. Entrup to secure the charter services. Mr. Fugate stated in his affidavit that on August 30, 2003, Respondent arrived at 21st and Lafayette Streets and transported the group to Invesco Field. At this time, Mr. Fugate paid the bus driver \$600 in cash. After the game, the group was transported back to 21st and Lafayette Streets.

10. Melanie K. Steinberg provided an affidavit to Mr. Opeka (Exhibit No. 6) describing her contact with Respondent. Ms. Steinberg states in her affidavit that during the

middle of August 2003, she contacted Boogie Bus and spoke with Robert Entrup. Mr. Entrup advised Ms. Steinberg that the total amount for charter bus service for Ms. Steinberg and a group of her friends to transport them from 1209 12th Street in Boulder to Invesco Field at Mile High for the UC/CSU football game was \$1,005. Ms. Steinberg also stated in her affidavit that Mr. Entrup advised her that Boogie Bus was fully insured and that she would be covered under the insurance policy. Ms. Steinberg states that she gave her credit card number to Mr. Entrup over the phone, authorizing Respondent to charge \$1,005 for bus service on her credit card.

11. Mr. Opeka testified that in his opinion, the services provided to Mr. Fugate and Ms. Steinberg was charter bus service which requires registration with Complainant under the provisions of § 40-16-103, C.R.S. Mr. Opeka stated that Respondent was not properly registered with Complainant.

12. Kristie L. Bramley testified that she requested Respondent to provide charter bus service on January 31, 2004 for her daughter and her friends to a function at Cherry Creek High School. Ms. Bramley requested that Respondent provide charter bus service to 24 high school students for approximately 5 hours' duration. Ms. Bramley charged the fee for the service in the amount of \$975 on her credit card as indicated in Exhibit No. 3. Respondent arrived to pick up the group on January 31, 2004. Ms. Bramley testified that Respondent transported the group to downtown Denver for a meal then to Cherry Creek High School. During the trip, Ms. Bramley stated that Respondent's driver hit a pole and another barricade during the course of the trip. She testified that the students were traumatized over this incident. After this incident, the students were transported by car provided by parents to Cherry Creek High School to attend the function. Ms. Bramley stated that she then contacted Mr. Entrup concerning the incident and she received a full refund for the amount of the fee.

13. Mr. Robert Laws of Staff testified that the four charges of Respondent failing to maintain registration relate to the four incidents described above. Mr. Laws is of the opinion that the service provided as described above is classified as charter bus service as described in § 40-16-101(4), C.R.S., and requires registration with the Commission. Mr. Laws stated that Respondent has not registered with the Commission since November of 2002.

14. The evidence of record establishes that Staff has met its burden to establish that Respondent violated the provisions of § 40-16-103, C.R.S., on July 12, 2003, August 30, 2003, and January 31, 2004 as charged in CPAN No. 28027, Charge Nos. 1, 4, 7, and 10. The evidence establishes that Respondent provided charter bus service and that Respondent failed to properly register with the Commission as required under § 40-16-103, C.R.S. Consequently Respondent will be assessed a penalty as stated in CPAN No. 28027 for the four violations in the amount of \$3,700.

15. The acknowledgement of liability of Respondent, Robert Entrup to Charge Nos. 3, 6, 9, 12, and 15 contained in CPAN No. 28027 is accepted. Respondent is assessed a total penalty of \$44,400 for failure to provide proof of insurance with the Commission as charged in the five counts.

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

III. ORDER

A. The Commission Orders That:

1. The motion of Staff of the Public Utilities Commission to dismiss Charge Nos. 2, 5, 8, 11, 13, and 14 contained in Civil Penalty Assessment Notice No. 28027 is granted. Charge Nos. 2, 5, 8, 11, 13, and 14 of Civil Penalty Assessment Notice No. 28027 are dismissed.

2. Respondent Robert Entrup, American Bus Ride, Inc., doing business as Boogie Bus, American Charters, AAAA Amica Bus Company, Limoliner, and A.Aable Rents, Inc.'s acknowledgement of liability to Charge Nos. 3, 6, 9, 12, and 15 of Civil Penalty Assessment Notice No. 28027 is accepted. Respondent is assessed a civil penalty in the amount of \$44,400 for failing to file proof of insurance with the Commission.

3. Respondent is found to be in violation of Charge Nos. 1, 4, 7, and 10, for failing to register with the Commission and it is assessed a civil penalty in the amount of \$3,700.

4. Respondent shall within 30 days of the effective date of this Recommended Decision, tender to the Public Utilities Commission the total civil penalty in the amount of \$48,100.

5. 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.

6. 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.

7. 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