

Decision No. R04-1157

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-307EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

CENTENNIAL LIMOUSINE, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
ASSESSING CIVIL PENALTY PURSUANT
TO SETTLEMENT AGREEMENT**

Mailed Date: October 5, 2004

Appearances:

David M. Nocera, Esq., Assistant Attorney General, for
Complainant, the Public Utilities Commission of the State of
Colorado; and

Jamal Marrackchi, for Respondent, Centennial Limousine, Inc.,
pro se.

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. This proceeding was instituted by the issuance of Civil Penalty Assessment Notice (CPAN) No. 28626 on or about June 3, 2004, directed to Respondent, Centennial Limousine, Inc. (Centennial), by the Staff of the Colorado Public Utilities Commission (Staff).

2. CPAN No. 28626 alleges that Centennial violated Parts 391.11(a), 391.11(b)(5), and 391.15(b)(1) of Rule 2.1 of the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 *Code of Colorado Regulations* (CCR) 723-15 (Safety Rules), by allowing its vehicles to be operated on five occasions between December 16, 2003 and May 8, 2004, by a driver who did not have a valid motor vehicle operators license. It seeks a total penalty of \$2,000.00.

3. The Commission originally set this matter for hearing on August 30, 2004, but it was rescheduled twice, once to August 26, 2004, and again to October 4, 2004. See, Decision Nos. R04-0805-I and R04-0989-I. The undersigned Administrative Law Judge (ALJ) called the matter for hearing at the assigned time and place. Staff appeared through its legal counsel. Centennial appeared through its President, Jamal Marrackchi.

4. Prior to commencement of the hearing, counsel for Staff and Mr. Marrackchi indicated that they had negotiated a settlement of this matter. They jointly requested that it be approved by the ALJ.

5. Under the terms of the settlement, Staff has agreed to dismiss Counts 1, 2, and 3 of CPAN No. 28626 and Centennial has agreed to acknowledge liability for Counts 4 and 5 and to pay a total civil penalty of \$400.00. Centennial has agreed to pay this civil penalty within ten days following the date this Order becomes a decision of the Commission. In the event the above penalty is not timely paid, Centennial has agreed to pay the full \$800.00 penalty relating to Counts 3 and 4 to the Commission immediately and Staff has reserved the right to reinstitute another civil penalty assessment proceeding against Centennial based on the facts and circumstances underlying Counts 1 through 3.

6. In support of this settlement, Staff's counsel indicated that there was a reasonable question as to whether the involved driver was providing transportation service for Centennial on the dates alleged in Counts 1 through 3 of CPAN No. 28626 and, as a result, there was some doubt as to Staff's ability to sustain its burden of proof on this issue. This formed the basis for Staff's agreement to dismiss Counts 1 through 3. In addition, Staff's counsel indicated that there was some question as to Staff's ability to sustain its burden of proof on the issue of whether Centennial's violation of the Safety Rules referred to in Counts 4 and 5 were intentional as required by 4 CCR 723-1-15-12. This forms the basis for Staff's agreement to reduce the penalty assessment for Counts 4 and 5 to \$400.00.

7. Centennial's admissions form a factual basis for the settlement agreement described above. The total \$400.00 penalty and the manner of payment are appropriate under the circumstances. Therefore, the parties' request that the settlement agreement be approved will be granted.

8. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following Order.

II. ORDER

A. The Commission Orders That:

1. The settlement agreement between the Staff of the Commission and Centennial Limousine, Inc. described in Section I, Paragraph 5 of this Order is approved.

2. Respondent, Centennial Limousine, Inc., is assessed a total penalty of \$400.00 to be paid to the Commission no later than the tenth day after this Order becomes a decision of the Commission. In the event this penalty is timely paid, Counts 1, 2, and 3 of Civil Penalty Assessment Notice No. 28626 shall be dismissed, with prejudice.

3. In the event the above penalty is not timely paid, the acknowledgement of liability for Counts 4 and 5 of Civil Penalty Assessment Notice No. 28626 described in Section I, Paragraph 5 of this Order shall constitute conclusive evidence that such violations occurred, Centennial Limousine, Inc. shall pay the full \$800.00 fine for such violations to the Commission immediately, and the Staff of the Commission may reinstitute another civil penalty assessment proceeding against Centennial based on the facts and circumstances underlying Counts 1 through 3 of Civil Penalty Assessment Notice No. 28626.

4. Docket No. 04G-307EC is closed.

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