

Decision No. R04-1411

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-301EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

RON AND SHELLEY VIGIL, DOING BUSINESS AS A-ABCOTT LIMOUSINE,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
ASSESSING CIVIL PENALTY**

Mailed Date: November 30, 2004

Appearances:

Anne K. Botterud, Esq., Assistant Attorney General, Denver,
Colorado, for Complainant the Public Utilities Commission of the
State of Colorado; and

Charles J. Kimball, Esq., Kimball & Nespor, P.C., Arvada,
Colorado, for Respondent, Ron and Shelly Vigil, doing business as
A-Abcott Limousine.

I. STATEMENT

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondents, Ron and Shelley Vigil, doing business as A-Abcott Limousine (A-Abcott).

2. In Civil Penalty Assessment Notice (CPAN) No. 28611, Staff alleges that between April 17, 2004 and May 22, 2004, A-Abcott violated § 40-16-103, C.R.S. (offering or providing transportation services without being registered with the Commission), on one occasion (Count 1); § 40-16-104, C.R.S. (providing transportation services without the proper insurance), on one occasion (Count 2); 4 *Code of Colorado Regulations* (CCR) 723-33-8.1 (failing to inspect a vehicle intended to be operated as a luxury limousine) on five occasions (Counts 3, 4, 7, 8, and 10); 4 CCR 723-35-2.1 (no Department of Transportation certification) on one occasion (Count 5); and 4 CCR 723-15-2 (using an unqualified driver for failing to have a valid license for the vehicle being driven) on two occasions (Counts 6 and 9). CPAN No. 28611 seeks imposition of a civil penalty in the total amount of \$15,850.00 for these alleged violations.

3. On June 23, 2004, the Commission issued an Order setting this matter for hearing on August 20, 2004, in Denver, Colorado. However, the hearing was continued to September 16, 2004, at Staff's request. *See*, Decision No. R04-0939-I.

4. The undersigned Administrative Law Judge (ALJ) called the matter for hearing at the assigned time and place. Both Staff and A-Abcott appeared through their respective legal counsel.

5. During the course of the hearing testimony was received in support of Staff's case from Mr. Reinhardt Wolf and Mr. Tony Munoz, Commission Compliance Investigators.¹ Ron and Shelley Vigil submitted testimony on behalf of A-Abcott. Exhibits 1 through 11 were identified, offered, and admitted into evidence. Exhibit 12 was offered but was rejected.

¹ The ALJ also allowed Ms. Karen Heimbrock to submit a statement at the hearing relating to the May 22, 2004, incident referred to in Counts 9 and 10 of CPAN No. 28611.

6. At the conclusion of the hearing the parties requested the opportunity to submit written statements of position on or before September 30, 2004. Both Staff and A-Abcott submitted statements of position on that date.

7. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT

8. A-Abcott provides luxury limousine services within Colorado. Its current owners are Ron and Shelley Vigil (Vigils). Their business address is 6969 East 90th Avenue, No. 924, Broomfield, Colorado. The Vigils acquired the assets of A-Abcott, including certain luxury limousine vehicles operated by its prior owner, in April 2002. The prior owner of A-Abcott had registered with the Commission as a luxury limousine operator.

9. Shelley Vigil acquired automobile liability insurance for the vehicles operated by A-Abcott in April 2003.² This coverage was for a combined single limit of \$1 million and was effective from April 21, 2003 through April 21, 2004. *See*, Exhibits 10 and 11. The Vigils registered A-Abcott as a luxury limousine operator in their names on or about April 29, 2004. They were assigned registration no. LL-01329. The evidence of insurance filed with the Commission in connection with such registration had an effective date of April 21, 2004. No claims were filed against A-Abcott's insurance carrier for damages incurred by any third-party during the time period encompassed by CPAN No. 28611.

10. On April 17, 2004, Mr. Munoz observed a white stretch limousine (white limo) dropping off passengers at the Douglas County Fairgrounds at or near Castle Rock, Colorado. It

² The insurance coverage was in Ms. Vigil's name because she individually financed its acquisition.

bore Florida license plates, no. C-937695. The driver, Ernest Murphy, indicated to Mr. Munoz that he was providing service on behalf of A-Abcott. *See*, Exhibits 6 and 8. He identified A-Abcott's business address as 4901 W. 81st Place, Westminster, Colorado. Mr. Munoz asked that Mr. Murphy produce a copy of the authorization letter issued to A-Abcott by the Commission. However, he was unable to do so. Mr. Munoz then prepared and issued Mr. Murphy a Violation Warning relating to this deficiency. *See*, Exhibit 6.³ He thereafter checked the Commission's database and could find no record of A-Abcott's registration, no record of insurance coverage filed on its behalf, and no record that the white limo had been inspected by Commission personnel.

11. On May 8, 2004, Mr. Munoz observed a 21-passenger "people-mover" (people-mover) dropping off passengers near the Boulder Theatre in Boulder, Colorado. The people-mover bore Colorado license plates, no. C-988HYX. The driver, Ron Vigil, indicated to Mr. Munoz that he was providing service on behalf of A-Abcott. He identified A-Abcott's business address as 6969 E. 90th Avenue, No. 924, Broomfield, Colorado. Mr. Vigil could not produce evidence that A-Abcott had registered with the Commission as a luxury limousine provider. Nor could he produce a medical card.⁴ In addition, the people-mover did not bear the required vehicle identification stamp. Therefore, Mr. Munoz prepared and issued Mr. Vigil a Violation Warning relating to these deficiencies. *See*, Exhibit 7.

12. On May 18, 2004, Mr. Wolf observed the people-mover dropping off passengers at Invesco Field in Denver, Colorado. The driver, Ron Vigil, indicated that he was providing

³ Exhibit 6 also contains a warning for operating the subject vehicle without a proper driver's license or medical card. However, Mr. Munoz testified that Mr. Murphy ultimately produced these items.

⁴ Mr. Vigil ultimately faxed a document to the Commission indicating that he had obtained the required medical card On May 12, 2004.

service on behalf of A-Abcott. He identified his address as 4901 W. 81st Place, Westminster, Colorado. Mr. Vigil could not produce a commercial driver's license (CDL). Therefore, Mr. Wolf placed the "people mover" out-of-service and issued Mr. Vigil a Violation Warning relating to this deficiency. *See*, Exhibit 4.

13. Later in the evening on May 18, 2004, Mr. Wolf observed both the white limo and the people-mover operating at Invesco Field in Denver, Colorado. Mr. Wolf asked the driver of the white limo, Mr. Vigil, whether both vehicles had been "qualified" as luxury limousine vehicles; *i.e.*, whether they had been inspected by the Commission's Enforcement Staff to confirm that they met the requirements of § 40-16-101(3), C.R.S. Mr. Vigil indicated that they had been so qualified. However, Mr. Wolf checked the Commission's records a few days later and could find no documents confirming that either vehicle had been qualified as luxury limousines by Commission personnel.

14. On May 22, 2004, Mr. Wolf learned that the people-mover had dropped off passengers near the El Jebel Temple in Denver, Colorado. He did not observe this activity. Later that evening, he observed the people-mover near the El Jebel Temple. He requested that the driver, Mr. Vigil, produce a CDL. However, Mr. Vigil was unable to do so. Therefore, Mr. Wolf placed the "people mover" out-of-service and issued Mr. Vigil a Violation Warning relating to this deficiency. *See*, Exhibit 5. Again, Mr. Wolf later checked the Commission's records and could find no documents confirming that the people-mover had been qualified as a luxury limousine by Commission personnel.

15. At the time of the May 18 and 22, 2004, incidents described above, both the people-mover and the white limo bore vehicle identification stamps issued by the Commission pursuant to § 40-2-110.5, C.R.S.

16. Mr. Wolf prepared CPAN No. 28611 shortly after the May 22, 2004, incident described above. A copy of the same was served on A-Abcott on May 27, 2004, via certified mail. *See*, Exhibits 2 and 3. None of the \$15,850.00 penalty referred to in CPAN No. 28611 had been paid by A-Abcott as of the date of the hearing.

III. DISCUSSION

17. Section 40-16-103, C.R.S., provides that no motor vehicle carrier exempt from regulation as a public utility (Exempt Carrier) may offer transportation services unless it is registered with the Commission. As part of the registration process, the Exempt Carrier must, among other things, submit proof that it has in place the insurance coverage required by § 40-16-104, C.R.S. That statute requires that Exempt Carriers maintain a general liability insurance policy in certain specified minimum amounts and also maintain adequate written documentation with the Commission that such insurance is in place. *See*, §§ 40-16-104(1) and (2), C.R.S.

18. An Exempt Carrier's failure to comply with the registration requirement imposed by § 40-16-103, C.R.S., subjects it to a civil penalty of not more than \$1,100.00 for each day's violation. *See*, §§ 40-7-113 (1)(f) and 40-7-115, C.R.S. An Exempt Carrier's failure to comply with the insurance requirement imposed by § 40-16-104, C.R.S., subjects it to a civil penalty of not more than \$11,000.00 for each day's violation. *See*, §§ 40-7-113 (1)(a) and 40-7-115, C.R.S.

19. Rule 4 CCR 723-33-8.1 provides that the Commission's Enforcement Staff may inspect vehicles intended to be operated as luxury limousines for the purpose of confirming that they meet the requirements of § 40-16-101(3), C.R.S. Vehicles that fail to so qualify will not be issued the vehicle identification stamps required by § 40-2-110.5, C.R.S. 4 CCR 723-33-8.1 provides that vehicle inspections will be conducted for vehicles that have not been "previously inspected." Staff contends that a luxury limousine operator's failure to comply with 4 CCR 723-

33-8.1 subjects it to a civil penalty of up to \$550.00 for each day's violation. *See*, 4 CCR 723-33-11.4.

20. Rule 4 CCR 723-15-2.1 incorporates various federal safety regulations into the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 CCR 723-15 (Safety Rules). Part 391.45 of Title 49 of the Code of Federal Regulations (CFR) requires drivers of commercial motor vehicles to be physically qualified to do so. Evidence of such physical qualification is evidenced by a certification of physical examination issued pursuant to 49 CFR Part 391.43. Rules 49 CFR Part 391.11(a) and 391.11(b)(5) require that drivers operating commercial motor vehicles to be qualified to do so by, among other things, holding a valid CDL. An Exempt Carrier's intentional failure to comply with these Safety Rules subjects it to a civil penalty of up to \$400.00 for each day's violation. *See*, 4 CCR 723-15-12.2.1 and 12.2.2.

21. The statutory definition of Exempt Carrier includes "luxury limousine services." *See*, § 40-16-101(4), C.R.S. That term is defined as "...a specialized, luxurious transportation service provided on a prearranged, charter basis." *See*, § 40-16-101(3.3), C.R.S. *See also*, § 40-16-101(3)(a), C.R.S., which, in pertinent part, defines a "luxury limousine" as "...a chauffeur-driven, luxury motor vehicle with a rear seating capacity of three or more, for hire on a prearranged charter basis to transport passengers in luxury limousine service...."

22. The credible evidence of record supports a finding that that A-Abcott held itself out to provide luxury limousine services within the meaning of the statutes referred to above on the dates encompassed by CPAN No. 28611. Therefore, it was, on the dates in question, subject to the registration and insurance requirements set forth in §§ 40-16-103 and 40-16-104, C.R.S., and the above-described Safety Rules.

23. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S. That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence.

24. Regarding Count 1 of CPAN No. 28611, Mr. Munoz' undisputed testimony establishes that A-Abcott was not registered with the Commission as a luxury limousine carrier as of April 17, 2004. The Vigils contend that the registration made by the prior owner of A-Abcott complies with this requirement. However, § 40-16-103, C.R.S., requires that, among other things, a luxury limousine registration include the name and address of the registrant. The Vigils conduct business in their own names, presumably as a partnership. A registration processed by a prior owner of A-Abcott could not comply with this requirement since it would not be in the Vigils' name. Nor would it bear the Vigils' address. The statute contemplates, therefore, that each new owner of a luxury limousine business register with the Commission in its own name. For this reason, A-Abcott violated § 40-16-103, C.R.S., as alleged in Count 1 of CPAN No. 28611.

25. Regarding Count 2 of CPAN No. 28611, the evidence establishes that A-Abcott had insurance coverage in place on April 17, 2004, covering operations conducted by the white limo. *See*, Exhibit 10 and § 40-16-104(1)(b)(I), C.R.S. Such coverage was not, however, sufficient to cover operations conducted by the people-mover. *See*, § 40-16-104(1)(b)(II), C.R.S.⁵ The ALJ is persuaded that A-Abcott requested that its insurance carrier file evidence of the \$1 million of insurance coverage with the Commission. *See*, Exhibit 11.⁶ However, the

⁵ This statute requires coverage of \$1.5 million for vehicles with a passenger capacity of more than 14 and less than 32.

⁶ It is possible that this insurance filing was rejected by the Commission since the name of the insured did not match the name of the registrant; *i.e.*, "Shelly E. Vigil, d/b/a A-Abcott Limousine" as opposed to "Ron and Shelley Vigil, d/b/a A-Abcott Limousine."

undisputed testimony of Staff's witness establishes that the Commission did not have evidence of such insurance coverage on file as of April 17, 2004. For this reason, A-Abcott violated § 40-16-104, C.R.S., as alleged in Count 2 of CPAN No. 28611.⁷

26. Regarding Count 5 of CPAN No. 28611, there is no evidence in the record that Ron Vigil was provided written notification prior to May 8, 2004, of the requirement that he obtain the certification required by 49 CFR Part 391.45. Therefore, his failure to comply with the certification requirement on that date cannot be deemed an intentional violation of that Safety Rule. *See*, 4 CCR 723-15-12.10. For this reason, A-Abcott did not violate 4 CCR 723-15-2.1 as alleged in Count 5 of CPAN No. 28611.

27. Regarding Count 6 of CPAN No. 28611, the evidence establishes that Ron Vigil was operating a commercial motor vehicle on May 18, 2004, and was unable to produce a valid CDL on that date. He was previously advised, in writing, of the CDL requirement. *See*, Exhibit 7. Therefore, his failure to comply with this requirement on the date in question constitutes an intentional violation of 49 CFR Parts 391.11(a) and 391.11(b)(5). *See*, 4 CCR 723-15-12.10. For this reason, A-Abcott did violate these Safety Rules as alleged in Count 6 of CPAN No. 28611.

28. Regarding Count 9 of CPAN No. 28611, there is insufficient evidence to establish that Ron Vigil was operating a commercial motor vehicle on May 22, 2004. Mr. Wolf was unable to testify that he observed Mr. Vigil doing so. Therefore, Staff was unable to establish by

⁷ A-Abcott's contention that Staff failed to prove the allegation set forth in Count 2 in light of the fact that it had insurance coverage in place on the date in question is not persuasive in light of § 40-16-104(2), C.R.S. That statute requires that Exempt Carrier maintain with the Commission adequate written documentation of such coverage.

a preponderance of the evidence that A-Abcott violated 49 CFR Parts 391.11(a) and 391.11(b)(5) as alleged in Count 9 of CPAN No. 28611.

29. Regarding Counts 3, 4, 7, 8, and 10 of CPAN No. 28611, it is noted that 4 CCR 723-33-8.1 imposes no affirmative obligation on the part of a luxury limousine operator to secure inspections of its vehicles for the purpose of confirming that they meet the requirements of § 40-16-101(3), C.R.S. Rather, the rule allows the Commission's Enforcement Staff to do so on a permissive basis. Since A-Abcott had no obligation under 4 CCR 723-33-8.1 to have its vehicles inspected, it cannot be sanctioned for failing to do so. For this reason, A-Abcott has not violated 4 CCR 723-33-8.1 as alleged in Counts 3, 4, 7, 8, and 10 of CPAN No. 28611.

30. In addition, the evidence establishes that the Vigils registered A-Abcott as a luxury limousine provider on April 29, 2004. It is reasonable to assume, therefore, that its vehicles would have been qualified as luxury limousines at that time. Indeed, Mr. Wolf indicated that both the people-mover and the white limo bore vehicle identification stamps issued by the Commission at the time of the May 18 and 22, 2004, incidents described above. Under 4 CCR 723-33-8.1 such vehicle identifications stamps would not have been issued in the absence of a vehicle inspection. This provides additional grounds for finding that A-Abcott did not violate this rule, at least with regard to Counts 7, 8, and 10 of CPAN No. 28611.

31. Section 40-7-113, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments. These include, among others, deterring future violations, motivating a carrier to come into compliance with the law, and punishing a carrier for prior, illegal behavior.

32. Based on the findings of fact and discussion above, the ALJ finds that the maximum \$400.00 civil penalty should be assessed to A-Abcott in connection with Count 6 of CPAN No. 28611. In this regard, it is noted that Ron Vigil was put on notice of the need to secure a CDL on May 8, 2004. However, he failed to do so and, instead, operated a commercial motor vehicle on May 18, 2004, without a valid CDL. This warrants imposition of the maximum penalty allowed by law.

33. Regarding Count 1 of CPAN No. 28611, the ALJ notes that the Vigils registered A-Abcott as a luxury limousine operator shortly after they were issued a Violation Warning on April 17, 2004, advising them of the need to do so. *See*, Exhibit 6. This supports the Vigils' apparent understanding that the registration of A-Abcott by a prior owner absolved them of the need to do so in their own right. It also demonstrates a desire on A-Abcott's part to comply with the registration requirement. These mitigating factors dictate that the penalty to be assessed to A-Abcott for violating § 40-16-103, C.R.S., be reduced to \$550.00.

34. Regarding Count 2 of CPAN No. 28611, the ALJ is persuaded that A-Abcott had insurance in place covering at least a portion of the company's operations during the period in question. He is also convinced that A-Abcott's failure to submit the required documentation to the Commission confirming this fact resulted from an administrative error over which A-Abcott had limited control. In addition, the record establishes that A-Abcott operated safely during the period in question. These mitigating factors dictate that the penalty to be assessed to A-Abcott for violating § 40-16-104, C.R.S., be reduced to \$2,750.00.

IV. CONCLUSIONS

35. Staff has sustained its burden of proving the allegations contained in Counts 1, 2, and 6 of CPAN No. 28611 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

36. Staff has not sustained its burden of proving the allegations contained in Counts 3, 4, 5, 7, 8, 9, and 10 of CPAN No. 28611 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

37. A-Abcott should be assessed the maximum civil penalty for the violation described in Count 6 of CPAN No. 28611 due to the aggravating factors discussed above.

38. The mitigating factors discussed above warrant a reduction in the civil penalty for the violation described in Count 1 of CPAN No. 28611 from \$1,100.00 to \$550.00.

39. The mitigating factors discussed above warrant a reduction in the civil penalty for the violation described in Count 2 of CPAN No. 28611 from \$11,000.00 to \$2,750.00.

V. ORDER

A. The Commission Orders That:

1. Respondents, Ron and Shelly Vigil, doing business as A-Abcott Limousine, are assessed a civil penalty in the amount of \$550.00 in connection with Count 1 of Civil Penalty Assessment Notice No. 28611; \$2,750.00 in connection with Count 2 of Civil Penalty Assessment Notice No. 28611; and \$400.00 in connection with Count 6 of Civil Penalty Assessment Notice No. 28611. They shall pay the total assessed penalty of \$3,700.00 within ten days of the effective date of this Order.

2. 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.

3. 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.

4. 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

