

Decision No. R04-1545-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-147CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

LEV TZOW, LLC, DOING BUSINESS AS MOUNTAIN LIMO,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ALLOWING SUPPLEMENTAL FILING**

Mailed Date: December 27, 2004

I. STATEMENT

1. Staff of the Commission (Staff) issued Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 28540-CPAN (CPAN). The CPAN, which alleges 40 violations of Commission rules, commenced this proceeding. Respondent Levtzow, LLC, doing business as Mountain Limo, acknowledged its liability for two of the alleged violations and requested a hearing on the remaining 38 alleged violations.

2. On December 3, 2004, the parties filed a Joint Motion to Vacate Hearing and Approve Stipulation and for Waiver of Response Time. A Stipulation and Settlement Agreement (Stipulation) accompanied that filing. If the Stipulation is accepted, it will resolve all issues in

this proceeding. By Decision No. R04-1443-I the Administrative Law Judge (ALJ) granted the motion to vacate the hearing and took the Stipulation under advisement.

3. On December 16, 2004, Staff submitted a Supplemental Filing with an Affidavit in Support of the Joint Motion. Paragraph 10 of the accompanying Affidavit of Robert Laws (Affidavit) sets out the factual bases for Staff's belief that the Stipulation is just, is reasonable, and is in the public interest and, therefore, should be accepted.

4. After review, the ALJ finds that the Affidavit is too conclusory to provide a sufficient factual basis for a determination that the Stipulation should be accepted. For example, the Affidavit fails to explain the basis for Staff's belief that "it would be unlikely the Commission, in the course of a contested proceeding, would assess Respondent the maximum amount (of \$200) for each violation cited" in the CPAN. Affidavit at ¶ 10.¹ In addition, the Affidavit states the "Respondent has demonstrated a willingness to comply" with the *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties*, 4 *Code of Colorado Regulations* 723-15. This assertion is made without elaboration and without explanation of what Respondent has done to demonstrate that willingness. Thus, at present, the information contained in the Affidavit is insufficient to persuade the ALJ that the Stipulation should be accepted.

5. If they wish to offer additional factual support for the Stipulation, the parties may file, on or before **January 7, 2005**, one or more supplemental affidavits. If a supplemental filing is not made, the ALJ will consider the Stipulation on the basis of the existing record.

¹ Based on oral representations of Respondent's counsel, it appears that at least a portion of the alleged *violations* may be of a technical nature. However, the Affidavit does not address the nature of the violations. Rather, the Affidavit (at ¶ 10) states that, taken as a whole, the *Rules* are rather technical in nature.

II. ORDER

A. It Is Ordered That:

1. On or before January 7, 2005, Staff of the Commission or Levzow, LLC, doing business as Mountain Limo, or both, may file one or more supplemental affidavits in support of the Stipulation and Settlement Agreement filed on December 3, 2004.

2. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge