

Decision No. C14-0737

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1141EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ROBERT JOSEPH STARR,

RESPONDENT.

DECISION DENYING EXCEPTIONS

Mailed Date: July 2, 2014
Adopted Date: June 25, 2014

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I. BY THE COMMISSION**A. Statement**

1. This matter comes before the Commission for consideration of exceptions to Decision No. R14-0394 (Recommended Decision) filed by Staff of the Colorado Public Utilities Commission (Staff) on May 21, 2014. Mr. Robert Joseph Starr (Respondent) filed a response to exceptions on May 30, 2014, urging the Commission to affirm the Recommended Decision. Consistent with the discussion below, we deny the exceptions and affirm the Recommended Decision.

B. Background

2. Staff charged Respondent with operating or offering to operate a luxury limousine without first having obtained a Commission permit, in violation of § 40-10.1-302(1)(a), C.R.S. This was Count 1 of the Civil Penalty Assessment Notice (CPAN). Staff also charged Respondent with failure to maintain and file with the Commission evidence of liability insurance, in violation of § 40-10.1-107(1), C.R.S. This was Count 2 of the CPAN.

3. Staff witnesses testified that, in October 2013, Respondent offered to provide transportation service in his 1997 Subaru Legacy station wagon, for compensation, through a Craigslist advertisement and later emails and text messages with Commission investigators. The evidence also showed that, on October 25, 2013, Respondent arrived to provide his services in the same vehicle. Respondent does not hold any type of permit and does not have any insurance on file with the Commission.

4. Following a hearing, the Administrative Law Judge (ALJ) found the vehicle in which Respondent offered to provide transportation was not a luxury limousine within the meaning of Rule 6308(a) of the Rules Regulating Transportation by Motor Vehicle,

4 *Code of Colorado Regulations* 723-6. Thus, the ALJ found Staff did not prove Count 1 of the CPAN.¹ The dismissal of Count 1 is not an issue on exceptions.

5. Further, the ALJ stated that § 40-10.1-107(1), C.R.S., requires *motor carriers* to have evidence of insurance on file with the Commission (emphasis added). The term “Motor carrier” refers to a “person owning ... any motor vehicle that provides transportation in intrastate commerce *pursuant to this article*” (i.e., Article 10.1 of Title 40). See, § 40-10.1-101(10), C.R.S. (emphasis by the ALJ).² The ALJ found Staff limited its case to Respondent offering to operate a luxury limousine (as opposed to another type of motor carrier subject to Commission regulation pursuant to Article 10.1).³ Because Staff did not prove the luxury limousine allegation, the ALJ found Staff also failed to prove Respondent was a motor carrier without insurance. Therefore, the ALJ dismissed Count 2 with prejudice in accordance to Colorado Rule of Civil Procedure 41(b)(1).⁴

C. Exceptions

6. Staff focuses its exceptions on the dismissal of Count 2. Staff argues that the failure to prove Respondent offered to operate a luxury limousine does not equate to the failure to prove he offered any type of motor carrier service. Staff argues it did not base Count 2 of the CPAN on Respondent offering a luxury limousine service. The evidence, according to Staff, showed Respondent owned the 1997 Subaru Legacy and that he offered transportation services in that vehicle for compensation. Staff contends these facts are sufficient to establish Respondent was acting as a motor carrier within the meaning of § 40-10.1-101(10), C.R.S.,

¹ Decision No. R14-0394, mailed April 14, 2014 (Recommended Decision), ¶ 53.

² *Id.*, ¶ 55.

³ *Id.*, ¶ 56.

⁴ *Id.*, ¶ 57. Thus, Staff is precluded from raising again any claims that were or could have been brought based on the same facts.

even if he was not acting as a luxury limousine carrier.⁵ Staff concludes it does not have to prove a defined type of motor carrier service in order to prove an obligation to carry insurance.

D. Discussion

7. Section 40-10.1-107(1), C.R.S., which Count 2 of the CPAN was based on, requires *motor carriers* to carry insurance. Section 40-10.1-101(10), C.R.S., defines the term “Motor carrier” as “person owning ... any motor vehicle that provides transportation in intrastate commerce *pursuant to this article*” (Article 10.1). Therefore, § 40-10.1-107(1), C.R.S., only applies to transportation or an offer of transportation of the type that is regulated pursuant to Article 10.1—for example, a common carrier such as a taxicab, a contract carrier, or a luxury limousine.

8. Staff did not argue at the hearing that Respondent was acting as any of the motor carriers regulated pursuant to Article 10.1 besides a luxury limousine carrier. Therefore, the ALJ is correct that: (1) Staff limited its case to Respondent offering to operate a luxury limousine; and (2) because Staff did not prove the luxury limousine allegation, it also failed to prove Respondent was a motor carrier that had an obligation to file evidence of insurance with the Commission.

9. We therefore deny the exceptions and affirm the Recommended Decision. This ruling is focused on the evidence and arguments presented at the hearing. Thus, its applicability as a precedent in future Commission proceedings is limited. By this Decision, we do not intend to discourage or prevent Staff from pursuing investigation and enforcement against unauthorized motor carriers in the future.

⁵ Staff’s exceptions, p. 8.

II. ORDER**A. The Commission Orders That:**

1. The exceptions to Decision No. R14-0394 filed on May 21, 2014 by Staff of the Colorado Public Utilities Commission are denied.

2. The 20-day period provided in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

3. This Decision is effective upon its Mailed Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
June 25, 2014.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

JOSHUA B. EPEL

PAMELA J. PATTON

GLENN A. VAAD

Commissioners