

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13C-1383EC

IN THE MATTER OF ALLEGED VIOLATIONS OF COLORADO REVISED STATUTES
AND COMMISSION RULES RELATING TO THE NON-PAYMENT OF THE CIVIL
PENALTIES ASSESSED TO HUMMERS OF VAIL, INC., OWNER OF LUXURY
LIMOUSINE REGISTRATION NO. LL-01417.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
REVOKING LUXURY LIMOUSINE
REGISTRATION PURSUANT TO COMPLAINT**

Mailed Date: January 2, 2014

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I. STATEMENT

1. This proceeding was instituted by a Complaint and Notice of Hearing (Complaint) issued by the Commission Director against Hummers of Vail Inc., doing business as Hummers

of Vail, Vail Taxi Service, ECO Limo of Vail, Vail Luxury Limo, and Vans to Vail Valley, (Respondent). Hearing Exhibit 1.

2. The Complaint seeks to revoke Respondent's luxury limousine Registration No. LL-01417 for failing to pay civil penalties the Commission assessed against Respondent pursuant to § 40-10.1-112(1), C.R.S. Hearing Exhibit 1.

3. The Complaint provided notice of the date, time, and location of the hearing regarding the Complaint. *Id.*

4. At the designated date, time, and location, December 13, 2013 at 10:00 a.m., the undersigned Administrative Law Judge (ALJ) called the case for hearing in a Commission Hearing Room, at 1560 Broadway, Suite 250, Denver, Colorado. *Id.* Respondent did not appear at that time. The hearing was recessed until 1:00 p.m., at which time the ALJ again convened the hearing.¹ Respondent again did not appear.

5. Commission Staff members Vanessa Condra and Katherine Lopez testified on behalf of the Staff of the Commission (Staff).

6. Hearing Exhibits 1 through 8 were identified, offered, and admitted into evidence during the hearing.

7. Pursuant to § 40-6-109, C.R.S., the ALJ transmits to the Commission the record of this proceeding, this recommended decision containing findings of fact and conclusions thereon, and a recommended order.

¹ The ALJ and Commission Staff were present in the assigned hearing room from 10:00 a.m. until noon, on another matter. Respondent did not appear during that timeframe. Nor did Respondent appear at the Commission's Office from noon until 1:00, when the hearing was recessed for lunch.

II. FINDINGS OF FACT, DISCUSSION, AND CONCLUSIONS

A. Respondent

8. Respondent owns, controls, operates, or manages one or more motor vehicles that provide transportation in intrastate commerce in Colorado and, thus, is a “motor carrier” as defined in § 40-10.1-101(10), C.R.S., and is subject to the Commission’s regulation. *See* Hearing Exhibit 5.

9. Respondent holds Commission-issued authority Registration No. LL-01417.² Respondent is authorized to provide luxury limousine service, as defined in § 40-10.1-301(8), C.R.S., and applicable Commission rules. Respondent conducts its luxury limousine service as Hummers of Vail, Vail Taxi Service, ECO Limo of Vail, Vail Luxury Limo, and Vans to Vail Valley.

10. Mr. Jonathan Levine is Respondent’s owner and registered agent. Hearing Exhibit 3; Hearing Exhibit 5, ¶ 43; Hearing Exhibit 2.

11. The Eagle County Sheriff’s Office (Sheriff) personally served the Complaint upon Mr. Levine on November 1, 2013.³ Hearing Exhibit 4. The ALJ finds that service upon Respondent was proper. § 40-6-108(3), C.R.S.; Colorado Rule of Civil Procedure 4(e)(4); Rule 1205(d) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-1; Rule 6011(c) of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

² As defined in § 40-10.1-101(14), C.R.S., the term “registration” includes an authority issued to a motor carrier under part 3 of article 10.1 of title 40, C.R.S. Part 3 includes authority to operate luxury limousine service.

³ The certificate of service (certificate) states that the Sheriff personally served the “foregoing Order of Summary Suspension and Complaint and Notice of Hearing.” Hearing Exhibit 4. Commission Staff member Vanessa Condra provided the records to the Sheriff for service. Ms. Condra clarified that the Complaint and Notice of Hearing referenced in the certificate is the Complaint and Notice of Hearing for this proceeding. Moreover, despite language in the certificate, the Sheriff did not provide a copy of the served documents to Ms. Condra after serving the Complaint and Notice of Hearing. Ms. Condra also sent the Sheriff the “order of summary suspension” for service that is referenced in the certificate. That document is not relevant to this proceeding; the ALJ makes no finding as to whether it was served on Respondent.

B. The Complaint

12. The Complaint notifies Respondent that the Commission will hold a hearing to determine whether Respondent's Registration No. LL-01417 should be revoked for failing to pay civil penalties assessed by Decision Nos. R13-0030 and C13-0352 in Proceeding No. 12G-0987EC. Hearing Exhibit 1. The Complaint also informs Respondent that it may appear at the hearing, present written data, views and arguments showing why the registration should not be revoked, as well as evidence of its compliance with the referenced decisions. *Id.* The Complaint advises Respondent that if it pays the outstanding civil penalties prior to the date of the hearing, that the Complaint will be dismissed. *Id.*

13. The Complaint is based upon the Commission's authority under § 40-10.1-112(1), C.R.S., and Rule 6008(c), 4 CCR 723-6. The Complaint alleges no other legal basis for revoking Respondent's registration.⁴

C. Civil Penalties

14. The Commission assessed Respondent a civil penalty after Administrative Law Judge (ALJ) Mana Jennings-Fader held an evidentiary hearing and found that Respondent violated Rule 6309(a), 4 CCR 723-6. Decision No. R13-0030 in Proceeding No. 12G-987EC; Hearing Exhibit 5. ALJ Jennings-Fader's Recommended Decision became a final Commission Decision on January 28, 2013. *Id.* In that proceeding, the Commission assessed Respondent a total civil penalty of \$1,100, which includes a surcharge. Hearing Exhibit 5. The total civil penalty was "due and payable immediately." *Id.*

15. By Decision No. C13-0352, the Commission assessed Respondent a separate civil penalty of \$1,775.00, effective March 26, 2013. Decision No. C13-0352 in Proceeding

⁴ For example, it does cite § 40-10.1-304, C.R.S. as authority to revoke Respondent's permit.

No. 12G-987EC. Hearing Exhibit 6. The Commission assessed this penalty after finding that Respondent violated Decision No. R12-0636 in consolidated Proceeding No. 12G-345EG. *Id.* In that consolidated proceeding, Staff and Respondent entered into a Stipulation, which was incorporated and ordered by Recommended Decision No. R12-0636. *Id.* Decision No. R12-0636 became final on July 2, 2012. *Id.* Pursuant to Decision No. R12-0636, if the Commission finds that Respondent violated Rule 6310(a) within 12 months of the Decision being made final, Respondent will be liable for an additional \$1,775.00. *Id.* In other words, if Respondent was found to have violated Rule 6310(a) within 12 months of July 2, 2012, Respondent would immediately be assessed a civil penalty of \$1,775.00.

16. Sometime after Decision No. R13-0030 issued, Staff filed a Motion seeking to enforce this provision of Decision No. R12-0636. Hearing Exhibit 6. The Commission found that the conditions set forth in Decision No. R12-0636 to hold Respondent liable for an additional \$1,775.00 had been met. *Id.* In particular, the Commission held that by Decision No. R13-0030, it found that Respondent violated Rule 6309(a), 4 CCR 723-6, within 12 months of the date Decision No. R12-0636 became final (July 2, 2012).⁵ Hearing Exhibit 6.

17. The Commission granted Staff's Motion and ordered that "[t]he amount of \$1,775.00 is due and payable immediately by Respondent." Hearing Exhibit 7.

18. Respondent has made no payments toward either of the civil penalties. *See* Hearing Exhibits 7 and 8.⁶

⁵ Due to a change in the Commission's Rules, Rule 6310(a) was renumbered and relocated to Rule 6309(a) after Decision No. R12-0636 issued. Decision No. C13-0352 acknowledges this change.

⁶ Hearing Exhibit 7 contains a typographical error, where it lists the amount assessed on March 27, 2013 as \$1,755.00. Ms. Lopez testified that this error should instead read \$1,775.00. Hearing Exhibit 8 does not include both of the civil penalties. Instead, it only shows the \$1,775.00 penalty, with a \$319.50 charge by Central Collection Services for its attempts to collect the civil penalty.

D. Legal Standards and Conclusions

19. Section 40-10.1-112(1)(c), C.R.S., authorizes the Commission to revoke a registration if the holder of the registration has violated or refused to observe any proper Commission orders or rules. Under this statute, a registration may only be revoked upon notice to the registration holder, after a hearing, and upon proof of violation. *Id.*

20. Staff carries the burden of proof under § 40-10.1-112(1)(c), C.R.S., to show by a preponderance of the evidence that Respondent violated or refused to follow the Commission's proper orders. § 13-25-127(1), C.R.S.; § 24-4-105(7), C.R.S.; Rule 1500, 4 CCR 723-1.

21. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

22. The ALJ finds that Staff met its burden of proof.

23. The evidence established that the Commission assessed two civil penalties against Respondent, by Decision Nos. R13-0030 and C13-0352, together, totaling \$2,875.00. Hearing Exhibits 5 and 6.

24. Decision Nos. R13-0030 and C13-0352 are entitled to a presumption of validity and regularity. *State Bd. Of Chiropractic Examiners, v. Stjernholm*, 935 P.2d 959, 972 (Colo. 1997) (agency actions have a presumption of validity and regularity); *see Public Utilities Comm'n v. District Court of County of Arapahoe*, 431 P.2d 773, 777 (Colo. 1967). And, the Decisions have never been challenged or appealed. Both Decisions are final and conclusive. § 40-6-112(2), C.R.S.; Hearing Exhibits 5 and 6. Consequently, the ALJ concludes

that Decision Nos. R13-0030 and C13-0352 are proper Commission decisions. *See* § 40-10.1-112(1)(c), C.R.S.

25. As the civil penalties were due and payable immediately, the deadline to abide by Decision Nos. R13-0030 and C13-0352 has long since passed. Hearing Exhibits 5 and 6. The Commission has given Respondent ample time to pay the civil penalties, having brought the matter to a hearing on December 13, 2013, nearly nine months after the last penalty was ordered. Hearing Exhibits 1 and 6.

26. The evidence demonstrated that Respondent has failed to abide by and observe the Commission's proper orders to pay the assessed civil penalties in Decision Nos. R13-0030 and C13-0352. *See* Hearing Exhibits 5 through 8.

27. Respondent has an established history of violating Commission Rules. *See* Hearing Exhibits 5 and 6. In Decision No. R13-0030, ALJ Jennings-Fader discussed Respondent's history violating Rule 6309(a) 4 CCR 723-6 at length, noting that Respondent's violations of that rule dates back to January 2007. Hearing Exhibit 5. Respondent has also demonstrated a pattern of failing to abide by Commission decisions to pay civil penalties. Respondent's history shows its substantial contempt for the Commission's authority.

28. Respondent's contempt for the Commission's authority was manifested on the day the hearing by its failure to appear.

29. Respondent has not shown good cause (or any cause) for its failure to pay the Commission's lawfully assessed civil penalties, or for its failure to appear at the hearing.

30. For the foregoing reasons and authorities, Respondent's luxury limousine Registration No. LL-01417 should be revoked.

31. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Public Utilities Commission Luxury Limousine Registration No. LL-01417 owned by Hummers of Vail Inc., doing business as Hummers of Vail, Vail Taxi Service, ECO Limo of Vail, Vail Luxury Limo, and Vans to Vail Valley (Respondent) is revoked as of the effective date of this Decision.

2. Ordering Paragraph No. 1 shall be void and the case dismissed if Respondent pays the total civil penalties assessed by Decision Nos. R13-0030 and C13-0352 on or before the effective date of this Decision. The total amount due for both penalties is \$2,875.00.

3. 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.

4. 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 notranscript 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.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown registrations this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

Doug Dean,
Director