

Decision No. R14-0296

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0044EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

COLORADO CLASSIC LIMO, LLC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
ASSESSING CIVIL PENALTY**

Mailed Date: March 19, 2014

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice (CPAN) No. 108474 issued by Public Utilities Commission Staff (Staff) on January 8, 2014 against Colorado Classic Limo, LLC (Respondent). The CPAN provides notice that upon proof of the violations alleged in the CPAN, a civil penalty of \$550.00, which includes a 10 percent surcharge, may be assessed against Respondent, and that the Public Utilities Commission (Commission) may order Respondent to cease and desist activities in violation of statutes and Commission rules. Hearing Exhibit 6. That action commenced this proceeding.

2. On January 31, 2014, Staff's counsel filed an Entry of Appearance and Notice Pursuant to Rule 1007(a).

3. On February 5, 2014, the Commission referred this matter to an administrative law judge (ALJ) for disposition. By Decision No. R14-0165-I issued February 11, 2014, the ALJ scheduled a hearing on the CPAN for March 12, 2014 at 10:00 a.m. at the Commission's office in Denver, Colorado.

4. At the designated date, time, and location, the undersigned ALJ called the matter for hearing. Staff appeared through counsel. Respondent failed to appear. The hearing was recessed until 10:15 a.m. in order to provide Respondent a further opportunity to appear. At that time, Respondent still did not appear. The hearing proceeded without Respondent.

5. During the course of the hearing, Hearing Exhibits 1 through 8 were identified, offered, and admitted into evidence. Mr. Nate Riley testified on behalf of Staff in support of the CPAN.

6. 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, DISCUSSION, AND CONCLUSIONS

7. Mr. Nate Riley is a criminal investigator for the Commission. As part of his duties, he investigates and verifies regulatory compliance of luxury limousine carriers with applicable Commission rules and Colorado law. This includes conducting safety and compliance reviews, conducting investigations, and performing random safety checks in the field.

8. On December 23, 2013, Mr. Riley was at terminal level 5 at Denver International Airport (DIA) conducting random safety checks of regulated carriers. According to Mr. Riley, only commercial vehicles may be present on terminal level 5, where they may pick up and drop off passengers. Mr. Riley and other Commission criminal investigators approached regulated carriers after observing them drop passengers off at terminal level 5.

9. Mr. Riley observed a passenger depart from a luxury limousine with PUC number “LL-02001.” He then approached the driver. He asked the driver to produce his current driver’s license and medical examiner’s certificate. The driver produced his driver’s license, which identified him as Amid K. Said. Mr. Said was unable to produce his medical examiner’s certificate. Mr. Said informed Mr. Riley that he works for Respondent.

10. Because Mr. Said did not produce his medical examiner’s certificate, Mr. Riley continued the safety check to a “level two” inspection. Mr. Riley described a level two inspection to include a visual inspection of the vehicle and requests for more information from the driver. Mr. Riley asked Mr. Said to provide documentation showing that the vehicle has been periodically inspected as required by federal regulations and the Commission’s rules. Mr. Said was unable to do so. Mr. Riley documented his inspection of Respondent’s vehicle by creating a “Driver/Vehicle Compliance Report.” Hearing Exhibit 1.

11. Based upon the above failures to produce the requested documentation, Mr. Riley placed the driver in “out of service” status. According to Mr. Riley, when a driver is put into “out of service” status by an investigator, the driver is immediately unable to transport passengers. The “out of service” status remains in effect until the driver has addressed the violation which forms the basis for the “out of service” status.

12. After the DIA random inspections, Mr. Riley followed up by confirming the information Mr. Said provided him with data in the Commission’s records. Mr. Riley was able to locate records in the Commission’s possession concerning Respondent and its luxury limousine registration. First, Mr. Riley reviewed the Respondent’s application for a luxury limousine registration on file with the Commission. Hearing Exhibit 2. According to the application,

Mr. Said is Respondent's President, owner, and designated agent. *Id.* Mr. Riley also confirmed that Respondent holds Commission-issued Registration No. LL-02001. Hearing Exhibit 3.

13. Mr. Riley searched for Commission records showing Respondent's history with the Commission. Mr. Riley discovered that on February 6, 2012, the Commission conducted a scheduled safety and compliance review with Respondent. Hearing Exhibit 5. The safety and compliance report (report) from that review shows that the Commission criminal investigator who conducted that review found 13 violations of federal or state regulations. *Id.* The criminal investigator did not issue a civil penalty assessment notice for these violations. Among those violations noted, Respondent was cited for failing to have the company's vehicles periodically inspected, violation of 49 *Code of Federal Regulations* (C.F.R.) § 396.17(a). This violation was described in the report as "critical." *Id.* With the report, Respondent was provided an information sheet that explains many of the requirements that Respondent was cited for violating, including that, "Section 396.17 requires documentation of the periodic inspection to be in/on the vehicle." *Id.*

14. On January 2, 2014, Mr. Riley called the Respondent's office. Mr. Riley did not indicate who he spoke with, but that he told the individual that Respondent must provide the Commission with a copy of Mr. Said's current medical examiner's certificate and documentation of the periodic inspection for the vehicle Mr. Said was driving on December 23, 2013. Respondent complied. In particular, on January 7, 2014, Respondent had the requested documents hand-delivered to the Commission. Hearing Exhibit 4.

15. Mr. Said's medical examiner's certificate shows that at the time of the random inspection, Mr. Said did have a current and valid medical examiner's certificate, which will not expire until September 27, 2014. *Id.* The periodic inspection report shows that the

luxury limousine that Mr. Said was driving at the time of the random inspection on December 23, 2013 had been properly inspected as required by federal and state regulations. Hearing Exhibit 4. In particular, the last periodic inspection was conducted on October 13, 2013. Consequently, vehicle was not due to be inspected at the time of the December 23, 2013 random inspection. *Id.*

16. Mr. Riley issued the CPAN on January 8, 2014. Hearing Exhibit 6. He decided to issue the CPAN, in part, because Respondent had been previously cited, but not assessed a civil penalty, for failing to have the vehicle periodically inspected. Hearing Exhibit 5. Mr. Riley believes the safety and compliance review demonstrates that Respondent has been privy to the rules, and that one of the Commission's criminal investigators has already explained the rules to Respondent, including the requirement that the vehicle be inspected and that the inspection report be maintained in the vehicle. *Id.*

17. The CPAN charges Respondent with two counts of violating Rule 6102(a)(1) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 on December 23, 2013.

18. On January 9, 2014, Mr. Riley served the CPAN by certified mail, return receipt requested, to Respondent's registered agent, at the registered agent's address. Hearing Exhibits 7 and 8. Mr. Riley sent the CPAN to the registered agent's address that he obtained from Respondent's corporate filings with the Colorado Secretary of State. *Id.* The return receipt provided by the United States postal service is difficult to read. Hearing Exhibit 8. However, Mr. Riley was clear that he did send the CPAN by certified mail to Respondent at the registered agent's address, 1155 South Havana Street, #11-461, Aurora, Colorado 80012.

Hearing Exhibit 7. Based on the foregoing, the ALJ finds that service upon Respondent was proper pursuant to § 40-6-116(1)(b), C.R.S.

19. Staff argued that the violations relate directly to safety of the public, as the Commission's only means of ensuring that drivers are medically safe to drive is to require them to carry their current medical examiner's certificate on them while on duty. Staff further argued that the only way for the Commission to ensure that the vehicles are safe is for drivers to carry the periodic inspection report in the vehicle. Staff recommended and requested that the ALJ assess Respondent the maximum penalty for each violation.

20. 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. 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.

21. The CPAN charges Respondent with two counts of violating Rule 6102(a)(1), 4 CCR 723-1. That Rule incorporates 49 C.F.R. § 391.41(a)(1)(i) and 49 C.F.R. § 396.17(c), as revised on October 1, 2010. Count 1 charges Respondent with violating Rule 6102(a)(1) by its violation of 49 C.F.R. § 391.41(a)(1)(i), while Count 2 charges Respondent with violating Rule 6102(a)(1) by its violation of 49 C.F.R. § 396.17(c) on December 23, 2013.

22. Under 49 C.F.R. § 391.41(a)(1)(i), drivers must not operate commercial vehicles unless they are both medically qualified to do so, and have a copy or the original of their valid medical examiner's certificate on their person while on duty.

23. Staff showed by a preponderance of the evidence that Mr. Said, a driver for Respondent, failed to have a copy of his valid medical examiner's certificate while on duty on December 23, 2013, in violation of Rule 6102(a)(1), 4 CCR 723-6 and 49 C.F.R. § 391.41(a)(1)(i).¹ Thus, the ALJ finds that Staff has met its burden with respect to Count 1 of the CPAN.

24. Pursuant to 49 C.F.R. § 396.17(c), a motor carrier must not use a commercial vehicle unless it has passed an inspection at least once within the preceding 12 months, and the documentation of such inspection is on the vehicle.

25. At hearing, Staff demonstrated by a preponderance of the evidence that Respondent failed to have in the vehicle documentation of the periodic inspection, as required by 49 C.F.R. § 396.17(c) and Rule 6102(a)(1), 4 CCR 723-6. Thus, the ALJ finds that Staff has met its burden with respect to Count 2 of the CPAN.

26. Having found the above violations of the cited regulations, it is necessary to determine the amount of the civil penalty to be assessed.

27. 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.

28. In accordance with Rule 1302(b), Rules of Practice and Procedure, 4 CCR 723-1, when imposing a civil penalty, the Commission will consider any evidence concerning the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;

¹ Mr. Said is also Respondent's president, owner, and registered agent. Hearing Exhibits 2 and 8.

- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors as equity and fairness may require.

29. The Commission performs an important health and safety function of guaranteeing that luxury limousine carriers operate in a safe manner to protect customers as well as the traveling public. Respondent disregarded its responsibilities to this Commission and the public by failing to maintain documentation of the periodic inspection in the vehicle, and by its driver's failure to have a copy of his current medical examiner's certificate on his person while on duty.

30. The ALJ finds that Respondent should be assessed a civil penalty for the proven violations detailed in Counts 1 and 2 of the CPAN. The maximum civil penalty for these violations is \$550.00, which includes a 10 percent surcharge.

31. The ALJ finds that there has been some mitigation. As Mr. Riley testified, Mr. Said was cooperative at the time of the random inspection, and Respondent also cooperated with Mr. Riley's request to provide the requested documents. Indeed, Respondent hand-delivered both the current medical examiner's card for Mr. Said, as well as a copy of the current and valid periodic inspection report soon after Mr. Riley requested that the records be provided. *Supra.* ¶ 14.

32. More important than Mr. Said's cooperation, is the fact that Mr. Said was medically qualified to drive a commercial motor vehicle at the time of the random inspection on December 23, 2013, and that the vehicle had been properly inspected at the time of the random inspection. *Supra.* ¶ 15.

33. Nevertheless, it is important to the public safety that the Commission enforce provisions requiring regulated carriers to keep their periodic inspection reports in the vehicles, and that their drivers maintain a copy of their medical examiner's certificate on their person while on duty. Otherwise, the Commission could not know whether the vehicles are safe or whether the drivers are medically qualified to drive. Although the Respondent was aware of these important safety obligations, Respondent failed to follow them.

34. After considering mitigating and aggravating factors, the ALJ will recommend that Respondent be assessed a total civil penalty of \$400.00, which includes a 10 percent surcharge, for Counts 1 and 2.

35. The ALJ finds that the civil penalty assessment described achieves the following purposes: (a) deterring future violations, whether by other similarly situated carriers and by Respondent; (b) motivating Respondent to come into compliance with the law; and (c) punishing Respondent for its past illegal behavior.

36. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Colorado Classic Limo, LLC (Respondent) is assessed a total civil penalty in the amount of \$400.00 for Counts 1 and 2, of Civil Penalty Assessment Notice No. 108474, which includes a 10 percent surcharge. Respondent shall pay the total assessed penalty of \$400.00 within 20 days of the effective date of this Decision.

2. Proceeding No. 14G-0044EC is closed.

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 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. 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.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge