

Decision No. R14-0394

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13G-1141EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ROBERT JOSEPH STARR,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
DISMISSING PROCEEDING WITH PREJUDICE**

Mailed Date: April 14, 2014

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I. STATEMENT

1. In October 2013, the Commission issued Civil Penalty Assessment Notice or Notice of Complaint No. 107929 (CPAN). The CPAN commenced this Proceeding.

2. On October 25, 2013, the Commission served the CPAN by personal service on Respondent Robert Joseph Starr (Starr or Respondent).

3. On November 15, 2013, counsel for Trial Staff of the Commission (Staff) entered his appearance in this Proceeding. In that filing and pursuant to Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1007(a),¹ Staff counsel identified the trial Staff and the advisory Staff in this Proceeding.

4. Staff and Starr, collectively, are the Parties.

5. Respondent is an individual and is a party in this matter. Pursuant to Rule 4 CCR 723-1-1201(b)(I), an individual who is not an attorney may represent his or her own interests in an adjudication before the Commission. Mr. Starr elected to represent himself in this Proceeding. On November 27, 2013, Decision No. R13-1473-I advised Mr. Starr of the standards to which he, as an individual who appears without legal counsel, is held to in this Proceeding.

6. On November 26, 2013, by Minute Order, the Commission assigned this Proceeding to an Administrative Law Judge (ALJ).

7. On December 23, 2013, by Decision No. R13-1579-I, the ALJ scheduled the evidentiary hearing in this matter for February 5, 2014. In addition, in that Decision, the ALJ established the procedural schedule for this Proceeding.

¹ This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

8. Pursuant to the established procedural schedule, on January 7, 2014, Staff filed its Witness and Exhibit Lists for Hearing. Copies of Staff's exhibits accompanied that filing.

9. Pursuant to the procedural schedule, Respondent was to file, not later than January 21, 2014, his list of witnesses and copies of the exhibits he would offer at hearing. Respondent did not make that filing.

10. On February 5, 2014, the ALJ called the hearing to order as scheduled. Both Parties were present, were prepared to proceed, and participated.

11. The ALJ heard the testimony of two Staff witnesses: Messrs. Brian Gates and Anthony Cummings. Hearing Exhibits No. 1 through No. 22 were offered and were admitted into evidence.²

12. At the conclusion of the presentation of Staff's direct case, the ALJ dismissed, on her own motion and with prejudice, the CPAN and this Proceeding. The ALJ made this ruling because Staff had failed to prove in its direct case an element of the allegations against Respondent. This Decision memorializes that ruling.

13. Pursuant to § 40-6-109(2), C.R.S., the ALJ now transmits to the Commission the record and exhibits of the Proceeding together with a written recommended decision.

II. FINDINGS OF FACT

14. The CPAN contains two counts.³ The first count alleges that, on October 18, 2013, Respondent violated § 40-10.1-302(1)(a), C.R.S., by operating or offering to operate a luxury limousine without first obtaining the required permit from the Commission.

² Hearing Exhibit No. 22 is a Confidential Hearing Exhibit.

³ The CPAN is Hearing Exhibit No. 12.

The second count alleges that, on October 18, 2013, Respondent violated § 40-10.1-107(1), C.R.S., by failing to maintain and to file with the Commission evidence of financial responsibility in the amount and on the form required by the Commission. In the CPAN, Staff seeks an order: (a) that requires Respondent to pay the maximum assessment of \$ 13,310;⁴ and (b) that requires Respondent to cease and desist from activities that violate applicable statutes and rules.

A. The Witnesses.

15. Staff witness Gates is a Criminal Investigator employed by the Commission in the Investigations and Compliance Unit of the Transportation Section. He conducted the investigation of Respondent that led to the issuance of the CPAN. Staff witness Gates used the name “Brendan Osage” during his contacts with Mr. Starr. Staff witness Gates has an established e-mail account⁵ that he uses during investigations; and he used that e-mail account when he exchanged e-mails⁶ with Respondent during the course of the investigation that led to the issuance of the CPAN.

16. Staff witness Cummings is a Lead Criminal Investigator employed by the Commission in the Investigations and Compliance Unit of the Transportation Section. In that capacity, he supervised Staff witness Gates during, and assisted him with, the investigation of Respondent that led to the issuance of the CPAN. In addition, Staff witness Cummings is the individual who signed and personally served the CPAN on Respondent.

⁴ The CPAN provides that the maximum civil penalty for the two alleged violations is \$ 12,100. With the 10 percent surcharge required by § 24-34-108, C.R.S., the total maximum assessment for the two alleged violations is \$ 13,310.

⁵ This account is separate from his Commission e-mail account.

⁶ The exchanges may have been by e-mail or by text message. For ease of reference, unless the context indicates otherwise, in this Decision reference to e-mail includes both e-mails and text messages exchanged between Staff witness Gates and Mr. Starr.

B. The Investigation.

17. The material facts set out in this Decision are uncontested.

18. Respondent is an individual.

19. As relevant here, Craigslist is an internet website on which persons post listings or advertisements that contain offers, made to the general public, to provide a wide-range of services. It is the transportation investigations Staff's usual practice to monitor Craigslist in order to identify those who may be offering transportation service and who may not have the required Commission-issued authorities to provide the offered service.

20. Staff's investigation in this case began on October 18, 2013 when Staff witness Gates, in the normal course of his duties, read a Craigslist listing placed by Respondent and located in the Craigslist section entitled "denver > all services offered > travel/vacation services[.]" Hearing Exhibit No. 4 at 1. The listing offered transportation from Denver and Glendale, and other areas, to Denver International Airport (DIA). *Id.* The listing stated that the transportation will cost "Around \$ 50.00, Rates From other areas will vary. Contact Bob at 303/329/8205 to Arrange Your Ride!!" *Id.* The listing also stated: "I would use your car. I do have a car it does not meet PUC requirements. I drive to your house. Then bring your car back. I am very reliable." *Id.*

21. Based on his experience as a Commission investigator, Staff witness Gates was aware that the transportation service actually provided might not be as described in the Craigslist listing. Consequently, on October 18, 2013, Staff witness Gates contacted Mr. Starr at the telephone number contained in the Craigslist listing to determine what transportation services Mr. Starr would provide.

22. During the conversation on October 18, 2013, Mr. Starr confirmed that he would provide transportation to DIA; that the cost of the transportation would be \$ 50; and that he would use his own vehicle. During the conversation, Staff witness Gates and Mr. Starr arranged: (a) transportation to DIA; (b) in Respondent's vehicle; (c) to occur on October 22, 2013; (d) with pick up to occur in Broomfield, Colorado at 6:15 a.m.; (e) for a price of \$ 50 for the transportation.

23. On October 18, 2013 at 9:14 a.m., Respondent sent an e-mail that confirmed the transportation arranged for October 22, 2013 and the cost of \$ 50.⁷ Hearing Exhibit No. 5 at 1. An exchange of e-mails between Staff witness Gates and Mr. Starr occurred on that date. The last e-mail, sent by Mr. Starr at 6:24 p.m. on October 18, 2013, said: "Do you need me to pick you up? I will. Just call." *Id.* at 4.

24. On October 21, 2013, Mr. Starr sent an e-mail to Staff witness Gates. Hearing Exhibit No. 7 at 1. In that e-mail, Mr. Starr confirmed the October 22, 2013 transportation to DIA; the 6:15 a.m. departure time; and the price of \$ 50. Staff witness Gates acknowledged the e-mail and confirmed the transportation. *Id.*

25. Later in the day on October 21, 2013, Mr. Starr sent another e-mail confirming the transportation. Staff witness Gates responded (by e-mail) that he still wanted to use Mr. Starr's transportation but that the date, the time, and the location for pick-up would change. Hearing Exhibit No. 6 at 1.

⁷ Hearing Exhibits No. 5, No. 6, No. 8, No. 10, and No. 11 contain e-mail exchanges between Staff witness Gates and Mr. Starr. In these Hearing Exhibits, the name of the sender and the name of the receiver are not shown. The e-mails sent from Mr. Starr are shown in black letters on white background, and the e-mails sent from Staff witness Gates are shown in white letters on black background.

There are other e-mail exchanges between Staff witness Gates and Mr. Starr (e.g., Hearing Exhibit No. 7). In these exchanges, one can read the name of the sender and the name of the receiver, and there is no color differentiation.

26. On October 23, 2013, Staff witness Gates sent an e-mail to Respondent and rescheduled the transportation to DIA to October 25, 2013, with pick-up to occur at 2:15 p.m. at a downtown Denver hotel. Hearing Exhibit No. 8 at 1. In response to a request from Staff witness Gates, Mr. Starr described the type and the color of the car that he would use to pick up Staff witness Gates as “green suburu [*sic*] legacy wagon[.]” *Id.* at 3.

27. In his investigation, Staff witness Gates confirmed, thorough motor vehicle records, that Mr. Starr owned a 1997 Subaru. Confidential Hearing Exhibit No. 22. Staff witness Gates also obtained, through the same record, the Colorado license plate number of Mr. Starr’s vehicle. *Id.*

28. On October 24, 2013, Mr. Starr inquired whether Staff witness Gates still wanted transportation on October 25, 2013. Hearing Exhibit No. 10. On October 25, 2013, Staff witness Gates confirmed the need for transportation and confirmed the location and the time for the pick-up, to which Mr. Starr responded: “Ok thanks great[.]” Hearing Exhibit No. 11 at 1.

29. On October 25, 2013, at approximately 2:00 p.m., Mr. Starr, driving a green Subaru with a Colorado license plate number that matched the number obtained from motor vehicle department records, arrived at the designated Denver hotel to pick up Staff witness Gates for the arranged transportation to DIA.

30. At approximately 2:04 p.m. on October 25, 2013, Staff witness Cummings personally served the CPAN on Mr. Starr, who was seated in his green 1997 Subaru Legacy station wagon.⁸ Respondent does not contest the service of the CPAN.

⁸ Subsequently, at Respondent’s request, Staff witness Gates e-mailed a copy of the CPAN to Respondent. In addition, Staff witness mailed a copy of the CPAN to Respondent.

31. At 2:11 p.m. on October 25, 2013, and after the CPAN was served on him, Mr. Starr sent an e-mail to Staff witness Gates. Hearing Exhibit No. 11. In that e-mail, Mr. Starr informed Staff witness Gates that: (a) Mr. Starr had arrived at the hotel; (b) Mr. Starr was no longer interested in using his vehicle to provide transportation to DIA; and (c) Mr. Starr would provide the transportation to DIA using Staff witness Gates's vehicle.

32. Mr. Starr's decision to provide transportation using Staff witness Gates's vehicle, and not Mr. Starr's vehicle, occurred after Staff witness Cummings had served the CPAN on Mr. Starr. Thus, the ALJ finds this plan to change vehicles to be unpersuasive on the question of whose vehicle was to be used for the transportation. The persuasive evidence is that, prior to the service of the CPAN, Mr. Starr planned to provide the transportation using his personal vehicle: a 1997 Subaru Legacy station wagon.

33. Staff witness Gates concluded that, because the transportation was prearranged, the transportation service offered by Mr. Starr was luxury limousine service. During the course of the investigation that led to the issuance of the CPAN, Staff witness Gates searched Commission records and found that Mr. Starr held neither a Commission-issued luxury limousine permit nor any other type of Commission-issued permit.⁹ In addition, during his investigation, Staff witness Gates searched Commission records and found that Mr. Starr did not have on file with the Commission either proof of insurance or record of insurance.

⁹ As defined in § 40-10.1-101(14), C.R.S., a permit is "issued to a contract carrier under part 2 [of article 10.1 of title 40, C.R.S.], or to a motor vehicle carrier under part 3, 4, or 5" of article 10.1 of title 40, C.R.S. A permit is clearly differentiated from a certificate, which § 40-10.1-101(2), C.R.S., defines as "the certificate of public convenience and necessity issued to a common carrier under part 2" of article 10.1 of title 40, C.R.S.

As a Criminal Investigator employed by the Commission, Staff witness Gates is familiar with the different types of Commission-issued authorities. His testimony is clear that he searched Commission records for *permits* held by Respondent.

34. Staff witness Cummings also conducted a search of Commission records during the course of the investigation that led to the issuance of the CPAN. The record search revealed that Mr. Starr held neither a Commission-issued luxury limousine permit nor, apparently, any other type of Commission-issued permit.¹⁰

35. Staff witness Gates's search of Commission records revealed that, in May 2012, Staff witness Cummings prepared a written Violation Warning in which Staff advised Mr. Starr that he could not provide transportation service without authority from the Commission. Hearing Exhibit No. 2. Staff issued the Violation Warning to Mr. Starr as a result of a Craigslist listing that is substantially the same as the October 18, 2013 Craigslist listing that commenced the investigation that led to issuance of the CPAN. *Compare* Hearing Exhibit No. 1 (May 2012 Craigslist listing) *with* Hearing Exhibit No. 4 (October 2013 listing). The May 2012 Violation Warning was served on Mr. Starr by U.S. mail. Hearing Exhibit No. 3.

36. Respondent neither challenges nor disputes the Commission's jurisdiction in this matter. The record establishes that the Commission has subject matter jurisdiction over this case and personal jurisdiction over Respondent.

37. At no time pertinent to this Proceeding did Mr. Starr, as an individual, hold a permit from the Commission to operate a luxury limousine in Colorado.

38. At no time pertinent to this Proceeding did Mr. Starr have on file with the Commission any evidence of financial responsibility.

¹⁰ See note 9, *supra* (definition of permit and definition of certificate). As a Lead Criminal Investigator employed by the Commission, Staff witness Cummings is familiar with the different types of Commission-issued authorities. His testimony is clear that he searched Commission records for *permits* held by Respondent.

III. DISCUSSION AND CONCLUSION

A. Applicable Statutes and Rules.

39. In *Count 1* the CPAN alleges a violation of § 40-10.1-302(1)(a), C.R.S. As pertinent to that allegation, the cited statutory provision states: “[a] person shall not operate or offer to operate a ... luxury limousine ... in intrastate commerce without first having obtained a permit therefor from the commission in accordance with” part 3 of title 40, article 10.1, C.R.S.

40. As pertinent here, § 40-10.1-101(9), C.R.S., defines “intrastate commerce” as “transportation for compensation by motor vehicles over the public highways between points in” Colorado.

41. Section 40-10.1-301(7), C.R.S., defines “luxury limousine” as “a chauffeur-driven, luxury motor vehicle *as defined by the commission by rule.*” (Emphasis supplied.) As pertinent here, the § 40-10.1-101(11), C.R.S., definition of “motor vehicle” includes “any automobile[.]”

42. The § 40-10.1-301(7), C.R.S., definition of luxury limousine incorporates the Commission rule definition of luxury limousine. That rule definition is found in Rule 4CCR 723-6-6308(a),¹¹ which states:

(a) A luxury limousine *shall fit* one or more of the following categories:

(I) Stretched limousine, which is a motor vehicle whose wheelbase has been lengthened beyond the manufacturer’s original specifications whether at the manufacturer’s factory or otherwise.

¹¹ This Rule is found in the Rules Regulating Transportation by Motor Vehicle, Part 6 of 4 *Code of Colorado Regulations* 723 (Transportation Rules).

The events that led to the issuance of the CPAN occurred in 2013. The Commission amended the Transportation Rules in 2014. Reference in this Decision to a Transportation Rule is to the version of the rule in effect in 2013 during the time period relevant to this Proceeding. The ALJ notes that the substance of Rule 4 CCR 723-6-6308(a) did not change when the Transportation Rules were amended in 2014.

(II) Executive car, which is a motor vehicle that has four doors and is:

(A) a sedan, crossover, or sport utility vehicle manufactured by: Acura, Audi, Bentley, BMW, Cadillac, Ferrari, Infiniti, Jaguar, Lexus, Lincoln, Maserati, Mercedes-Benz, Porsche, or Rolls Royce; or

(B) one of the following: Chrysler 300, Hyundai Equus, Saab 9-5, Chevrolet Suburban, Chevrolet Tahoe, Ford Excursion, Ford Expedition, GMC Yukon, Hummer (all models, excluding sport utility truck version).

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a minivan as classified by the original manufacturer) whose interior has been enhanced by the installation of either:

(A) Captain's chairs, couch seats, or similar seating in place of standard bench seating; or

(B) Both of the following:

(i) An electronic video media system such as television with DVD that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least ten inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

(IV) Other limousine, which is a classic, antique, or specially built motor vehicle that has had a retail value of \$50,000.00 or more.

(Emphasis supplied.) In addition, Rule 4CCR 723-6-6309 establishes operational requirements for luxury limousines, including the requirement that luxury limousine service be provided on a prearranged basis.

43. In *Count 2* the CPAN alleges a violation of § 40-10.1-107(1), C.R.S.

As pertinent to that allegation, the cited statutory provision states that

[e]ach motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the

commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

As pertinent here, § 40-10.1-101(10), C.R.S., defines a motor carrier as “any person owning, controlling, operating, or managing any motor vehicle that provides transportation in intrastate commerce pursuant to” title 40, article 10.1, C.R.S. The Commission rule that establishes the sums, the types of protection, and the forms for financial responsibility is Rule 4 CCR 723-6-6007.

B. Burden of Proof.

44. As the party seeking an order from the Commission, Staff bears the burden of proof, by a preponderance of the evidence, with respect to the relief sought. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. To prevail in this Proceeding, Staff must prove, by a preponderance of the evidence, facts that support the alleged two violations, each of which rests on the assertion that Mr. Starr operated, or offered to operate a luxury limousine without having the requisite Commission-issued permit.

C. Motion to Dismiss.

45. At the conclusion of the plaintiff’s (here, Staff) direct case, the defendant (here, Respondent) may make, pursuant to Colorado Rule of Civil Procedure (Colo.R.Civ.P.) 41(b)(1), a motion to dismiss the complaint. As pertinent here, Colo.R.Civ.P. 41(b)(1) states that, in a trial to the court (here, the ALJ) and after the plaintiff (here, Staff) has rested its direct case,

the defendant [here, Respondent], without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff [here, Staff] has shown no right to relief. The court [here, the ALJ] as trier of the facts may then determine [the facts] and [may] render judgment against the plaintiff [here, Staff] or may decline to render judgment until the close of all the evidence.

This motion tests the sufficiency of the direct case presented by the plaintiff (here, Staff). A dismissal pursuant to Colo.R.Civ.P. 41(b)(1) is an adjudication on the merits and, thus, is a dismissal with prejudice.

46. The test or standard to be applied in determining whether to dismiss a case at the conclusion of the plaintiff's (here, Staff) direct case is: whether a judgment in favor of the defendant (here, Respondent) is justified on the basis of the evidence presented by the plaintiff (here, Staff) in its direct case. *City of Aurora v. Simpson (In re Water Rights of Park County Sportsmen's Ranch)*, 105 P.3d 595, 613-14 (Colo. 2005). As pertinent here, the motion should be granted and the proceeding should be dismissed if the plaintiff (here, Staff) fails to establish a necessary element of its proof.

D. Dismissal at Conclusion of Staff's Direct Case.

47. *Count* alleges that, on October 18, 2013, Mr. Starr violated § 40-10.1-302(1)(a), C.R.S. As relevant in this Proceeding, the elements of proof necessary to establish that alleged violation are: (a) an offer; (b) to operate in intrastate commerce; (c) a motor vehicle that is a luxury limousine, as defined by Rule 4 CCR 723-6-6308(a); (d) without having a Commission-issued permit. Failure of Staff to prove any one of these elements in its direct case merits dismissal of Count 1 pursuant to Colo.R.Civ.P. 41(b)(1).

48. Staff established in its direct case that Mr. Starr offered to provide transportation in his 1997 Subaru Legacy station wagon. Staff established in its direct case that, when Mr. Starr arrived to provide the prearranged transportation service, he was driving his 1997 Subaru Legacy station wagon. What Staff did *not* establish in its direct case is that Mr. Starr's 1997 Subaru Legacy station wagon is a luxury limousine as defined in Rule 4CCR 723-6-6308(a).

49. Rule 4 CCR 723-6-6308(a)(I) provides that, if it meets the listed requirements for a stretched limousine, a motor vehicle is a luxury limousine. Staff presented no evidence that Mr. Starr's 1997 Subaru Legacy station wagon is a stretched limousine within the meaning of the Rule.

50. Rule 4 CCR 723-6-6308(II) provides that an executive car is a luxury limousine if the vehicle either is manufactured by one of 14 listed companies or is one of the listed motor vehicle models. Subaru is not among the listed companies, and a Subaru Legacy station wagon is not among the listed motor vehicle models. A Subaru Legacy station wagon does not meet this definition of luxury limousine.

51. Rule 4CCR 723-6-6308(a)(III) provide that, if it meets the listed requirements as an executive van with specified amenities, a vehicle is a luxury limousine. Staff presented no evidence that Mr. Starr's 1997 Subaru Legacy station wagon is an executive van within the meaning of the Rule.

52. Rule 4CCR 723-6-6308(a)(IV) is the remaining provision of the Rule that Mr. Starr's 1997 Subaru Legacy station wagon might meet. To establish that Mr. Starr's vehicle is a luxury limousine as defined in Rule 4CCR 723-6-6308(a)(IV), Staff would have had to present evidence to establish that Mr. Starr's vehicle "is a classic, antique, or specially built motor vehicle that has or had a retail value of \$50,000.00 or more." Staff presented no such evidence in its direct case.

53. Because Staff failed to establish in its direct case a necessary element of its proof, Staff did not prove the allegations in Count 1 of the CPAN.

54. *Count 2* alleges that on October 18, 2013, Mr. Starr violated § 40-10.1-107(1), C.R.S. As relevant in this Proceeding, the elements of proof necessary to establish that alleged

violation are: (a) on October 18, 2013, Mr. Starr was a motor carrier; (b) who did not maintain or have “on file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require[.]” Failure of Staff to prove any these elements in its direct case merits dismissal of Count 2 pursuant to Colo.R.Civ.P. 41(b)(1).

55. As pertinent here, § 40-10.1-101(10), C.R.S., defines a motor carrier as “any person owning, ..., operating, ... any motor vehicle that provides transportation in intrastate commerce *pursuant to*” title 40, article 10.1, C.R.S. (emphasis supplied). Rule 4 CCR 723-6-6007 establishes the sums, the types of protection, and the forms for financial responsibility that the Commission requires for motor carriers.

56. Section 40-10.1-107(1), C.R.S., and Rule 4CCR 723-6-6007 apply only to those who provide transportation in intrastate commerce pursuant to article 10.1 of title 40, C.R.S. By the CPAN and its testimony, Staff limited this Proceeding to Mr. Starr’s offering to operate a luxury limousine. Thus, Count 2 rests on the premise that, on October 18, 2013, Mr. Starr offered to operate a luxury limousine and, as a result, provided transportation pursuant to article 10.1 of title 40, C.R.S. As discussed above, Staff failed to prove that Mr. Starr offered to operate a luxury limousine. Thus, Staff failed to prove in its direct case that, on October 18, 2013, Mr. Starr was a motor carrier.

57. Because Staff failed to establish in its direct case a necessary element of its proof, Staff did not prove the allegations in Count 2 of the CPAN.

58. For these reasons, the ALJ finds that Staff failed to meet its burden of proof on the issue of whether Respondent offered to operate a luxury limousine as alleged in Count 1 of the CPAN. Because Staff did not establish that Respondent offered to operate as a

luxury limousine, Staff did not establish that Mr. Starr committed either of the violations alleged in the CPAN.

59. Based on the record in this Proceeding and for the reasons discussed above, the ALJ concludes that the CPAN and this Proceeding should be dismissed, in their entirety, with prejudice.

60. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, Civil Penalty Assessment Notice or Notice of Complaint No. 107929 is dismissed with prejudice.

2. Consistent with the discussion above, this Proceeding is dismissed with prejudice.

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.

5. 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

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MANA L. JENNINGS-FADER

Administrative Law Judge