

Decision No. C04-0933

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-067EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

LARRY HOLLE D/B/A BUS EXPRESS,

RESPONDENT.

ORDER DISMISSING APPLICATION FOR RRR

Mailed Date: August 16, 2004

Adopted Date: August 3, 2004

I. BY THE COMMISSION

A. Statement, Findings, and Conclusions

1. On May 27, 2004, an Administrative Law Judge (ALJ) issued Recommended Decision No. R04-0566. This decision found that Mr. Larry Holle, doing business as Bus Express had committed the violations contained in Civil Penalty Assessment Notice (CPAN) No. 28461. The CPAN alleged one violation of § 40-14-103, C.R.S. (specifically, operating a scenic or charter bus without being registered with the Commission), and one violation of § 40-16-104, C.R.S., operating without the required insurance.

2. The ALJ also found that Mr. Holle was eligible for double penalties pursuant to § 40-7-113(3), C.R.S., because he had received a CPAN for violation of § 40-16-103, C.R.S., in

the past year, and he had a CPAN for failure to have the correct type and amount of insurance within the past year. *See* Decision No. R03-1456.

3. In Decision No. R04-0566, the ALJ issued civil penalties of \$24,200 based upon the repeat offenses committed by Mr. Holle.

4. In the Decision, the ALJ set forth the requirements of § 40-6-109, C.R.S., which states as follows:

[I]f no exceptions are filed within twenty days after service upon the parties, or within such extended period of time as the commission may authorize in writing, or unless such decision is stayed within such time by the commission upon its own motion, such recommended decision shall become the decision of the commission and subject to the provisions of section 40-6-115.

5. The Recommended Decision was issued on May 27, 2004. It became effective as the Commission's decision pursuant to § 40-6-109(2), C.R.S., on June 17, 2004 because no exceptions were filed within the 20 days.

6. Pursuant to § 40-6-114, C.R.S., a party to a decision may file an application for rehearing, reargument, or reconsideration (RRR) within 20 days after the decision has become a decision of the Commission. This requirement is jurisdictional because the statute does not allow the Commission to consider applications for RRR after the 20-day deadline. The deadline for filing such a request in this case was July 7, 2004.

7. Mr. Holle filed with this Commission a document titled "exceptions" on July 8, 2004. Because this was well after the deadline for exceptions, we construe the filing as an application for RRR. Even construed as RRR, the filing was late by one day.

8. On July 15, 2004, Commission Staff (Staff), through its counsel moved to strike the filing because it was late.

9. While the Commission has the ability to waive its rules pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-3, it may not waive statutory requirements, including deadlines for filing exceptions and applications for RRR.

10. Because Mr. Holle filed the pleading late, we may not consider it for lack of jurisdiction.

11. Because we have no jurisdiction over Mr. Holle's application, we deny Staff's motion as moot.

II. ORDER

A. The Commission Orders That:

1. Larry Holle's application for RRR is dismissed without addressing its merits.
2. Commission Staff's motion to strike is denied as moot.
3. Commission Decision No. R04-0566 is adopted in full as the Decision of the Commission.
4. The 20-day time period provided by § 40-6-114(1), C.R.S., to file an application for rehearing, reargument, or reconsideration shall begin on the first day after the Commission mails or serves this Order.
5. This Order is effective on its Mailed Date.

**B. ADOPTED IN THE COMMISSIONERS' WEEKLY MEETING
August 3, 2004.**

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Commissioners