

Decision No. R04-0463-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-156EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

ROBERT ENTRUP, AMERICAN BUS RIDE, INC. (D/B/A BOOGIE BUS, AMERICAN CHARTERS, AAA AMICA BUS COMPANY, LIMOLINER), AND A. AABLE RENTS, INC.,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
DENYING MOTION TO DISMISS**

Mailed Date: May 5, 2004

I. STATEMENT

1. On April 6, 2004, Robert Entrup, *pro se* (Respondent) filed a Motion to Dismiss Civil Penalty Assessment Notice (CPAN) No. 28027, issued by Staff of the Colorado Public Utilities Commission (Complainant) on March 31, 2004.

2. On April 20, 2004, Complainant filed a Response to the Motion to Dismiss.

3. In support of the Motion to Dismiss, Respondent contends that the carrier American Bus Ride, Inc. (doing business as Boogie Bus *et al.*) is the Respondent in this matter and that he, Robert Entrup as an individual cannot be held personally liable for the violations. Respondent also states that the charges contained in CPAN No. 28027 were not cited (and presumably served on Respondent) at the time of the alleged violations and that some of the

alleged violations occurring on January 31, 2004 and February 21, 2004 had not been properly cited pursuant to Title 40 of Colorado Revised Statutes. Lastly, Respondent contends that the Public Utilities Commission lacks jurisdiction over this matter since Colorado Revised Statutes grant jurisdiction to the courts of Colorado.

4. In its Response, Complainant requests that Respondent's motion be dismissed, as baseless, and not supported by law. Complainant, in response to Respondent's argument that Mr. Entrup as an individual is not personally liable for the alleged violations cited in the CPAN, states that this is a mixed question of law and fact which must be determined at the hearing since no factual support or legal analysis has been submitted in support of Respondent's grounds to dismiss the case. Complainant next contends that all of the alleged violations were properly cited under the provisions of § 40-7-116, C.R.S., and that there is no requirement that the violations be charged or served at the time of the occurrence. Finally, Complainant asserts that Respondent's argument that the Commission lacks jurisdiction under the provisions of § 40-16-108, C.R.S., since the statute states that the courts of the State of Colorado have jurisdiction over all of the matters arising under Article 16 is incorrect since the above statute does not confer upon the courts exclusive jurisdiction over matters arising under Article 16.

5. Having considered the Motion to Dismiss and the Response, it is found that Respondent's motion is without merit, and should be denied. Complainant correctly asserts that the Commission has jurisdiction over this matter since §§ 40-16-102(2) and 40-16-107(3), C.R.S., expressly provides that carriers subject to Article 16 of Title 40 can be charged with civil penalties under the Commission's enforcement power as provided in §§ 40-7-112 through 40-7-116, C.R.S. Complainant also correctly asserts that the question of whether Mr. Entrup is personally liable for the alleged violations contained in CPAN No. 28027 is a mixed question of

law and fact that cannot be determined without factual and legal support. Finally, the argument of Respondent that the alleged offenses should be dismissed since they were not cited at the time of the occurrence is not supported by law. Section 40-7-116, C.R.S., provides that a CPAN may be served in person or by certificated mail.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss filed by Respondent Robert Entrup on April 6, 2004 is denied.

2. This Order is effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge