

Decision No. R04-0487

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-201EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

GO N STYLE LIMOUSINE, INC., DOING BUSINESS AS
FIFTH AVE N STYLE LIMOUSINE,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING PAYMENT AND ADMISSION
OF LIABILITY, ASSESSING A CIVIL
PENALTY, AND CLOSING DOCKET**

Mailed Date: May 11, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

1. The issuance of Civil Penalty Assessment Notice No. 28585 (CPAN) commenced this proceeding. The CPAN alleges that, on April 24, 2004, Go N Style Limousine, Inc., doing business as Fifth Ave N Style Limousine (Respondent), used a driver who did not have a valid license to drive a commercial motor vehicle, thus violating 49 *Code of Federal Regulations* (CFR) §§ 391.11(a) and 391.11(b)(5), which are incorporated by reference into the *Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties* by Rule 4 *Code of Colorado Regulations* (CCR) 723-15-2.1.

2. The CPAN states that, if payment is received within ten days from the date of the CPAN's issuance, the civil penalty is \$200. The CPAN further states that, if payment is not received within ten days, the Commission Staff (Staff) will seek a civil penalty in the amount of \$400, which is the maximum civil penalty for the alleged violation. The CPAN also states that payment of the assessment is an acknowledgement (*i.e.*, admission) of liability. *See* Respondent's Options, CPAN at 2.

3. On April 26, 2004, Staff served the CPAN on Respondent by personal service. *See* CPAN at 2.

4. On April 30, 2004, Respondent tendered payment of \$200 by check. Respondent admitted the alleged violation. *See* CPAN at 2, signed by Respondent.

5. Respondent does not dispute the Commission's jurisdiction. The Commission has subject matter jurisdiction over this case and personal jurisdiction over the Respondent.

6. Section 391.11(a) of 49 CFR provides that, except in circumstances not relevant here, "a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless that person is qualified to drive a commercial motor vehicle." Section 391.11(b)(5) of 49 CFR provides that, with exceptions not relevant here, "a person is qualified to drive a motor vehicle if he/she ... has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction[.]"

7. Respondent has admitted, and the Administrative Law Judge finds and concludes, that Respondent violated 49 CFR §§ 391.11(a) and 391.11(b)(5) (incorporated by reference by Rule 4 CCR 723-15-2.1) on April 24, 2004, as alleged in the CPAN.

8. In accordance with the provisions of the CPAN, the civil penalty to be assessed in this proceeding is \$200, which amount Respondent tendered by check to the Commission on April 30, 2004. The ALJ finds and concludes that the amount of the civil penalty to be assessed is reasonable, is in accord with Commission procedures, and is in the public interest.

9. The ALJ finds and concludes that, assuming the check clears and the money is collected by the Commission, this docket will be closed.

10. The ALJ finds and concludes that, in the event the check does not clear and the Commission does not collect the money, the \$200 payment was not made within the required ten days; the maximum civil penalty is \$400; the acknowledgement is void; and this docket should not be closed. In the event the check does not clear, Staff may file, within 14 days of learning that the check did not clear, a request to reopen this proceeding and cite state this Decision as the basis for the request to reopen.

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

II. ORDER

A. The Commission Orders That:

1. Go N Style Limousine, Inc., doing business as Fifth Ave N Style Limousine, has violated Rule 4 *Code of Colorado Regulations* 723-15-2.1 and 49 *Code of Federal Regulations* §§ 391.11(a) and 391.11(b)(5).

2. A civil penalty is assessed against Go N Style Limousine, Inc., doing business as Fifth Ave N Style Limousine, in the amount of \$200 *provided* the submitted payment clears and the money is collected by the Commission.

3. This docket is closed, subject to reopening pursuant to ¶ II.4.

4. In the event the submitted payment does not clear and the money is not collected by the Commission, the maximum civil penalty is \$400; the acknowledgement is void; and this docket may be reopened. In the event the submitted payment does not clear, Commission Staff may file, within 14 days of learning that the payment did not clear, a request to reopen this proceeding.

5. 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.

6. 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.

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

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge