

Decision No. R04-0572-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-219CP

RDSM TRANSPORTATION. LTD., D/B/A YELLOW CAB COMPANY OF COLORADO
SPRINGS,

COMPLAINANT,

V.

SAMJA'S ENTERPRISES, INC., D/B/A EXPRESS AIRPORT TAXI/EXPRESS TAXI,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING PETITION FOR VARIANCE
OF DISCOVERY RULES; DENYING
MOTION TO DISMISS COMPLAINT;
DENYING MOTION TO STRIKE
AND MOTION *IN LIMINE*; ESTABLISHING
DEADLINE FOR FILING ANSWER
TO COMPLAINT; VACATING HEARING
DATE AND PROCEDURAL SCHEDULE;
AND GRANTING ADDITIONAL TIME
TO RESPOND TO DISCOVERY**

Mailed Date: May 28, 2004

I. STATEMENT

1. The captioned proceeding was initiated on April 30, 2004, when the Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Formal Complaint (Complaint) with the Colorado Public Utilities Commission (Commission) against Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi).

2. On the same day it filed the Complaint, RDSM also filed a pleading entitled “Petition for Waiver for Variance from Rules or Requirements” (Petition for Variance). The Petition for Variance seeks a variance from certain of the Commission’s discovery rules set forth at 4 *Code of Colorado Regulations* (CCR) 723-1-77(c).

3. On May 3, 2004, the Commission issued its Order to Satisfy or Answer (Order to Satisfy) along with an Order Setting Hearing and Notice of Hearing (Hearing Notice) setting this matter for hearing on June 17, 2004, at 9:00 a.m. in Denver, Colorado. The Order to Satisfy, the Complaint, the Hearing Notice, and the Petition for Variance were served on Express Taxi on that date.

4. On May 7, 2004, a deadline of May 24, 2004, was established for the submission of Express Taxi’s response to the Petition for Variance. *See*, Decision No. R04-0475-I. That deadline was designed to correspond to the timeframe afforded by 4 CCR 723-1-61(d) for the submission of Express Taxi’s responsive pleading to the Complaint.

5. On May 24, 2004, Express Taxi filed a pleading entitled “Motion to Dismiss Formal Complaint” (Motion to Dismiss). The Motion to Dismiss seeks dismissal of the Complaint under the Colorado Antitrust Act of 1992 and on the ground that it fails to state a claim for relief. In the event the Motion to Dismiss is denied, Express Taxi requests that the hearing of this matter and the deadline for submitting a response to the Petition for Variance be continued to July 12, 2004.

6. On May 26, 2004, RDSM filed a pleading entitled “Complainant’s Motion to Dismiss Respondent’s Pleadings” (Motion to Strike). The Motion to Strike seeks to have the Motion to Dismiss stricken by virtue of Express Taxi’s failure to respond to discovery and/or its

failure to submit “appropriate responsive pleadings” to the Complaint. *See*, 4 CCR 723-1-77(c)(4) and 4 CCR 723-1-61. In the alternative, RDSM requests that Express Taxi be precluded from submitting evidence in this matter (Motion *In Limine*) in response to the allegations set forth in the Complaint. In addition, RDSM objects to Express Taxi’s request for a continuance of the hearing.

7. Rule 61(d) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-61(d), authorizes respondents in formal complaint proceedings to submit motions to dismiss complaints prior to submitting an answer thereto. However, subsection (2) of that rule requires that such motions be filed within ten days following service of the complaint. Express Taxi was served with the Complaint on May 3, 2004. Therefore, any desired motion to dismiss the same was due on May 13, 2004. The Motion to Dismiss was not filed until May 24, 2004, and, therefore, was not timely. As a result, it will be denied. This renders the Motion to Strike moot and it will, therefore, be denied on that basis.

8. Rule 61(d)(2) of the Commission’s Rules of Practice and Procedure, 4 CCR 723-1-61(d)(2), provides that “...when a motion to dismiss is filed, the time to answer the complaint ...shall be extended to a date 10 days after Commission service of an order denying the motion to dismiss.” Therefore, by virtue of the denial of the Motion to Dismiss by this Order, Express Taxi’s Answer to the Complaint is now due on or before June 7, 2004.

9. The submission of Express Taxi’s Answer only ten days prior to hearing leaves inadequate time for hearing preparation. Therefore, Express Taxi’s request for a hearing continuance will be granted and the currently scheduled hearing date of June 17, 2004, will be

vacated.¹ The parties shall, on or before June 7, 2004, submit written advisements concerning their availability for a re-scheduled hearing of this matter within the period of July 1, 2004 through August 30, 2004.² Such advisements shall also indicate the number of days each party estimates will be necessary to hear this matter.

10. Vacating the current hearing date also requires that the deadlines for submission of the parties' witness and exhibits lists established by 4 CCR 723-1-71(a)(5) and 4 CCR 723-1-71(a)(6) be vacated. New deadlines for the submission of this material will be established in conjunction with the setting of new hearing dates.

11. The Petition for Variance will be granted and Express Taxi's request for an enlargement of time to respond to the same will be denied. Decision No. R04-0475-I made it clear that Express Taxi's failure to respond to the Petition for Variance on or before May 24, 2004, would be construed as a confession of that motion. Express Taxi failed to submit a substantive response prior to that date. Therefore, the Petition for Variance is uncontested and will be granted on that basis.

12. RDSM will be allowed to take the deposition of one representative of Express Taxi.³ In addition, it will be allowed to serve a total of 40 written interrogatories, requests for admission, and requests for production of documents, each of which shall consist of a single

¹ RDSM objected to Express Taxi's hearing continuance request pursuant to 4 CCR 723-1-72(a)(9). However, Decision No. R04-0475-I waived the applicability of that rule in this proceeding.

² Although an effort will be made to re-schedule the hearing at a convenient time for all, the undersigned cannot ensure that that can be accomplished.

³ Rule 77(c)(1) of the Commission's Rules of Practice and Procedure, 4 CCR 723-77(c)(1) only precludes taking depositions of parties. Therefore, RDSM is free to take as many depositions of non-parties as it desires.

question and/or request.⁴ Requests for the issuance of subpoenas must be made pursuant to 4 CCR 723-1-85.

13. Because a grant of the Motion to Dismiss would have rendered RDSM's Interrogatories and Requests for Production of Documents dated May 7, 2004 moot, RDSM's Motion *In Limine* will be denied and Express Taxi will be granted additional time to respond to that discovery. Objections to such discovery pursuant to 4 CCR 723-1-77(b)(3) must be submitted on or before June 7, 2004. In the absence of objections, responses to the same must be provided on or before June 14, 2004.

II. ORDER

A. It Is Ordered That:

1. The Motion to Dismiss Formal Complaint filed by Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, is denied.

2. Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, shall file its Answer to the Formal Complaint filed in this matter on or before June 7, 2004.

3. The Motion to Dismiss Respondent's Pleadings filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is denied as moot.

4. The Petition for Waiver for Variance from Rules or Requirements filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is granted, consistent with the provisions of this Order.

⁴ This includes RDSM's Interrogatories and Requests for Production of Documents dated May 7, 2004 (Exhibit A to the Motion to Strike) already served on Express Taxi.

5. The hearing of this matter, currently scheduled for June 17, 2004, is vacated. The parties shall, on or before June 7, 2004, submit written advisements concerning their availability for a re-scheduled hearing of this matter within the period of July 1, 2004 through August 30, 2004. Such advisements shall also indicate the number of days each party estimates will be necessary to hear this matter.

6. The Motion *In Limine* filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is denied. Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, shall submit its objections/responses to RDSM Transportation, Ltd., doing business as Yellow Cab Company's Interrogatories and Requests for Production of Documents dated May 7, 2004, on or before the deadlines set forth in Section I, Paragraph 13 of this Order.

7. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

