

Decision No. R04-0736-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
DENYING REQUEST FOR
ISSUANCE OF SUBPOENA DUCES TECUM**

Mailed Date: July 2, 2004

I. STATEMENT

1. On July 1, 2004, Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a pleading entitled "Complainant's Attorney Affidavit for Issuance of Subpoena Duces Tecum" (Affidavit) in the captioned matter.

2. The Affidavit requests that the Colorado Public Utilities Commission (Commission) issue a Subpoena Duces Tecum (Subpoena) to Pinnacol Insurance requiring it to produce a worker's compensation insurance policy issued by it on behalf of Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi), at a deposition to be held on July 16, 2004. In support of its request, RDSM contends that production of the subject

policy may allow it to challenge Express Taxi's credibility or may warrant amending the Complaint it previously filed in this matter. A copy of the Subpoena is attached to the Affidavit.

3. Requests for issuance of subpoenas duces tecum in Commission proceedings are governed by Rule 85 of the Commission's Rules of Practice and Procedure, 4 *Code of Colorado Regulations* 723-1-85, § 40-6-103(1), C.R.S., and Rule 45 of the Colorado Rules of Civil Procedure (CRCP).

4. Section 40-6-103(1), C.R.S., provides, in pertinent part, as follows: "No subpoena shall be issued except on good cause shown. Good cause shall consist of an affidavit stating with specificity the ... documents sought and the **relevance** of such ... documents to the proceedings of the Commission." (Emphasis added). CRCP 45(d)(1) provides that "[A] Deposition Subpoena ...may require the production of documentary evidence **which is within the scope of discovery permitted by Rule 26.**" (Emphasis added). Rule 26(b)(1), in turn, provides that "...parties may obtain discovery regarding any matter, not privileged, that is **relevant** to the claim or defense of any party...." (Emphasis added).

5. The Complaint contains two main allegations; that Express Taxi has violated § 40-10-110, C.R.S., by failing to maintain the required liability insurance for all vehicles in its fleet, and that control of Express Taxi's Certificate of Public Convenience and Necessity PUC No. 55670 has been transferred in violation of § 40-10-110, C.R.S.¹ It does not contain a claim that Express Taxi has violated any provision of public utility law by failing to secure or

¹ The Complaint also contends that Express Taxi has failed to pay civil penalties assessed against it by the Commission for the violation of unspecified Commission regulations. However, the Commission's records do not reflect any outstanding and unpaid penalty assessments against Express Taxi.

maintain worker's compensation insurance. Therefore, the documents requested in the Subpoena are irrelevant to the issues involved in this proceeding and are, therefore, not discoverable.

6. Therefore, RDSM's request for issuance of the Subpoena will be denied.

II. ORDER

A. It Is Ordered That:

1. The request for issuance of subpoena duces tecum set forth in Complainant's Attorney Affidavit for Issuance of Subpoena Duces Tecum filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, is denied.

2. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge