

Decision No. R04-0833

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-148CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SAMJA'S ENTERPRISES, INC., DOING BUSINESS AS EXPRESS AIRPORT
TAXI/EXPRESS TAXI,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
WILLIAM J. FRITZEL
ASSESSING CIVIL PENALTY**

Mailed Date: July 21, 2004

Appearances

Paul Hoffman, Staff of the Public Utilities Commission; and

Earl Elsrode, President/General Manager of Express Airport
Taxi/Express Taxi.

I. STATEMENT

1. On March 23, 2004, Staff of the Public Utilities Commission (Staff) issued Civil Penalty Assessment Notice (CPAN) No. 28541 to Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Respondent). Staff charged Respondent with 56 violations of 4 *Code of Colorado Regulations* (CCR) 723-15-2.1 which incorporates certain federal motor carrier safety regulations. The Federal Motor Carrier Safety Regulations are codified in Chapter 3 of Title 49 of the Code of Federal Regulations.

2. The Commission scheduled a hearing in this matter for June 18, 2004. By Decision No. R04-0628-I mailed on June 10, 2004, the June 18, 2004 hearing date was vacated and rescheduled to July 8, 2004, at the request of Respondent.

3. The hearing was held on July 8, 2004. Testimony was received from Paul Hoffman, Carl Elsrode, and Betty Williams. Exhibit Nos. 1 through 9 were marked for identification and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

4. Pursuant to § 40-6-109, C.R.S., the record and exhibits of the proceeding together with a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

5. Respondent holds certificate of public convenience and necessity, PUC No. 55670 from this Commission.

6. The Commission has jurisdiction over this matter.

7. On March 23, 2004, Respondent was personally served with CPAN No. 28541 charging Respondent with 56 violations of 4 CCR 723-15-2.1, incorporating parts of the Federal Motor Carrier Safety Regulations.

8. On June 18, 2004, Staff filed Notice of Service on Respondent of Corrected CPAN No. 28541. Respondent was served with the corrected CPAN. Staff in its notice states that the new CPAN replaces the CPAN served on Respondent on March 23, 2004. Staff states that the reason for service of this new CPAN is that it discovered several typographical errors pertaining to the violations regarding charges 42 through 47 and 49 through 55. Staff wishes to correct the citations on violations 42 through 47 to charge violations of 4 CCR 723-15-2.1; Part 396.3(b)(1). Staff also requests to change the citation of violations 49 through 55 to 4 CCR

723-15-2.1; Part 396.3(b)(2). These corrections are contained in Exhibit No. 1. The change relates only to the citation references and not to the alleged offenses. The nature of the charges remains the same. The notice is construed as a motion of Staff to amend the CPAN issued on March 23, 2004. The Motion to Amend is granted.

9. Some of the alleged violations cited in the amended CPAN improperly cite violations of 4 CCR 723-25-2.1, which is the citation of the Rules Regulating the Authority to Offer Local Exchange Telecommunications Services, Emerging Competitive Telecommunications Services, to Discontinue or Curtail Any Service, to Execute a Transfer or Merger, and Registration as a Toll Reseller. The citation is incorrect since Respondent is a motor carrier and the alleged violations citing 4 CCR 723-25 do not apply to motor carriers. Consequently charges 1, 5, 6, and 7, will be dismissed.

10. Staff charged Respondent with the following categories of violations:
 - A. 4 CCR 723-15-2.1; Part 391.21(a) and (b), Incomplete Employment Application;
 - B. 4 CCR 723-15-2.1; Part 391.23(c) and 391.51(b)(2), Failed to Maintain Record of Previous Employer Responses;
 - C. 4 CCR 723-15-2.1; Part 391.27(a) Failed to have Driver Furnish List of Violations;
 - D. 4 CCR 723-15-2.1; Part 391.51(b)(7), Failed to have Medical Examination Certificate on File Regarding Driver Taylor;
 - E. 4 CCR 723-15-2.1; Part 395.8(a), No Complete and Accurate Record of Duty Status Regarding Various Drivers;
 - F. 4 CCR 723-15-2.1; Part 396.3(b)(1), Failed to Maintain Complete Record Identification for Vehicles; and
 - G. 4 CCR 723-15-2.1; Part 396.3(b)(2), Failed to Maintain Adequate Plan of Service for Vehicles.

All of the charged violations each carry a penalty of \$200. The total penalty minus the penalty for the charges dismissed is \$10,400.

11. The violations charged by Staff in CPAN No. 28541 are the result of a safety and compliance review performed by Staff member Paul Hoffman on March 3 through 5, 2004. (Exhibit No. 2) Mr. Hoffman testified that during his review, he found numerous violations of the Commission's safety rules as indicated in Exhibit No. 2. Not all of the violations found by Mr. Hoffman during his review resulted in a charge.

12. Mr. Hoffman testified that many of the violations contained in the 2004 CPAN are repeat violations. Exhibit No. 5 is a safety and compliance review performed by Mr. Hoffman on March 6 and 7, 2002. On February 19-20, 2003 Mr. Hoffman performed a safety and compliance review of Respondent (Exhibit No. 3). In the 2003 review, Mr. Hoffman once again found numerous and repeated violations of the Commissions Rules. Based on this review, Mr. Hoffman issued CPAN No. 28137 (Exhibit No. 4). The safety and compliance reviews provided to Respondent contained specific recommendations for corrective action.

13. Earl Elsrode, the President and General Manager of Respondent testified that he believes that nearly all of the violations charged are for extremely minor violations. The implication is that Staff is concentrating on form rather than substance. Mr. Elsrode stated that he keeps very good records. Although he admits that he may not be in exact compliance with the rules, he does attempt to comply with same. Respondent introduced Exhibit Nos. 6, 7, and 8 to show that Respondent keeps maintenance records and maintains its vehicles. Exhibit No. 9 was introduced by Respondent to show that it maintains driver records.

14. Ms. Betty Williams, Office Manager of Respondent testified that during the 2004 compliance review, Mr. Hoffman stated that the recordkeeping of Respondent has improved from prior years however he believed that there still was a problem concerning the recordkeeping. For

example, he told Ms. Williams that the driver's trip sheets do not include the point of origin and ending addresses.

15. The evidence of record establishes that Respondent violated the rules and regulations charged in CPAN No. 28541. The record further shows that the specific violations charged are repeated violations found in previous compliance and safety reviews by Staff. These violations were brought to the attention of Respondent by Staff with specific recommendations contained in the transportation safety and compliance reviews for corrective action. Respondent does not contest the factual accuracy of the charged violations. The record also indicates that there has not been a significant improvement made by Respondent. The Commission has adopted the safety rules for the protection of the public. It is essential that motor carriers holding authority from this Commission comply with the Commissions' safety rules.

16. Pursuant to § 40-6-109(2), C.R.S., it is recommended that the Commission enter the following order.

III. ORDER

A. The Commission Orders That:

1. Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi is found to be in violation of counts 2, 3, 4, and 8 through 56 of Civil Penalty Assessment Notice No. 28541, and is assessed a civil penalty in the amount of \$10,400.

2. Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi shall remit to the Public Utilities Commission the amount of \$10,400 within 30 days of the effective date of this Recommended Decision.

3. Charges 1, 5, 6, and 7 of Civil Penalty Assessment Notice No. 28541 are dismissed.

4. 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.

5. 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.

6. If exceptions to this 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

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