

Decision No. R04-1103

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NOS. 04G-065EC AND 04G-096EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

MARLA DASHIELL,

RESPONDENT.

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

Mailed Date: September 16, 2004

Appearances:

Michael J. Santisi, Assistant Attorney General for Complainant;

Marla Dashiell (*Pro Se*), Respondent.

I. STATEMENT

1. On February 21, 2004, Staff of the Public Utilities Commission (Complainant or Staff) served Civil Penalty Assessment Notice (CPAN) No. 28504 on Marla Dashiell (Respondent).

2. Respondent was charged with one violation of failing to register with the Public Utilities Commission in violation of § 40-16-103, C.R.S., with an assessed penalty of \$1,100. Respondent was also charged with one violation of failing to have proper insurance on file with the Public Utilities Commission contrary to § 40-16-104, C.R.S., with an assessed penalty of

\$11,000. Both alleged violations occurred on February 21, 2004. The total assessed penalty is \$12,100. This matter was assigned a docket number of 04G-065EC, and scheduled for hearing on May 11, 2004.

3. On or about February 21, 2004, Respondent was served CPAN No. 28213.

Respondent was charged with six violations as follows:

1. Operating without proper authority on August 29, 2003 in violation of § 40-10-104, C.R.S.
2. Operating without proper insurance on August 29, 2003 contrary to § 40-10-110, C.R.S.
3. Operating without proper registration on August 30, 2003 in violation of § 40-16-103, C.R.S.
4. Knowingly operated without proper insurance on August 30, 2003 contrary to § 40-16-104, C.R.S.
5. Operated without proper authority on September 29, 2003, contrary to § 40-10-104, C.R.S.
6. Operated without proper insurance on September 29, 2003, contrary to § 40-10-110, C.R.S.

4. The total assessed penalty of CPAN No. 28213 is \$13,700. This case was designated by the Commission as Docket No. 04G-096EC and set for hearing for May 11, 2004.

5. On March 24, 2004, Complainant filed a Motion to Consolidate the dockets.

6. The Motion to Consolidate was granted in Interim Decision No. R04-0368-I (April 9, 2004).

7. In Decision No. R04-0506-I, the consolidated docket was scheduled for hearing for July 15, 2004.

8. The hearing was held as scheduled. As a preliminary matter, Respondent admitted liability to the two charges contained in CPAN No 28504, Docket No. 04G-065EC. Because of Respondent's admission, Complainant elected not to proceed to hearing on Docket

No. 04G-065EC. The matter proceeded to hearing on Docket No. 04G-096EC. Testimony was received from Complainant's witnesses and Complainant's Exhibits A through E were marked for identification and admitted into evidence. Respondent elected not to present evidence. As a preliminary matter, Staff moved to amend the date of violation of charges 5 and 6 of CPAN No. 28213 to September 22, 2003 rather than September 29, 2003. The Motion to Amend was granted.

9. At the conclusion of the hearing, the matter was taken under advisement.

10. Pursuant to § 40-6-109, C.R.S., the record of a hearing and a written recommended decision are transmitted to the Commission.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. Reinhard Wolf, Complainant's Compliance Investigator testified that on or about August 30, 2003, he followed a bus to Boulder. The bus proceeded to a fraternity house to pick up passengers. Mr. Wolf identified Respondent as the driver. Mr. Wolf contacted Respondent and requested proof of insurance. Respondent handed Mr. Wolf an insurance identification card (Exhibit C). She also gave Mr. Wolf a manifest for a fraternity house in Boulder with instructions of where to proceed with the passengers. After the contact with Respondent, Mr. Wolf issued a violation warning (Exhibit D).

12. John Opeka, a Compliance Investigator with Staff continued the investigation. He testified that he checked the records at the Public Utilities Commission and determined that Respondent did not have on file with the Commission proper proof of insurance nor was Respondent registered under the provisions of § 40-16-103. C.R.S.

13. Mr. Opeka also testified that he obtained an insurance card through discovery that is similar to the card produced by Respondent on August 30, 2003. (Exhibit C). Mr. Opeka

checked the records at the Office of the Colorado Insurance Commission and found that the insurance company named on Exhibit C is not licensed to sell insurance in the State of Colorado. Mr. Opeka believes that the insurance card is falsified. Based on this information, Complainant charged Respondent with charges 3 and 4 on CPAN No. 28213, operating without proper registration and operating without proper insurance

14. Bob Laws of Staff testified that he received a complaint advising him that there was a bus operation operating between Old Chicago Restaurant in lower downtown Denver and Invesco Field at Mile High. On or about August 29, 2003 Mr. Laws proceeded to Old Chicago where he observed a female sell \$2 roundtrip transportation tickets to a Denver Broncos football game. Mr. Laws observed Respondent accept the tickets and transport people from Old Chicago presumably to the Broncos Stadium.

15. On or about September 22, 2003, Mr. Laws and two other members of Staff proceeded to lower downtown Denver and saw several buses loading people charging \$2 per person. Mr. Laws testified that he saw Respondent drive one of the buses.

16. Mr. Laws testified that he observed Respondent accept tickets and transport passengers on August 29, 2003 and September 22, 2003. Mr. Laws further testified that Respondent does not hold authority from this Commission to provide transportation for hire. Mr. Laws also testified that Respondent does not have proper insurance on file with the Commission.

17. Mr. Laws stated that he advised Respondent that the transportation companies that she was driving for did not hold authority or were not properly registered, and that they had no insurance on file with the Commission. Mr. Laws advised Respondent that she should not drive

or operate a motor vehicle for hire without insurance or the proper authority from this Commission.

18. The evidence of record establishes that Respondent as an independent contractor drove motor vehicles for hire and transported passengers for one or two transportation companies. The evidence also establishes that Respondent was not properly registered and/or did not have authority to operate motor vehicles for hire, and did not have proper insurance on file with the Commission on the dates cited by Complainant in CPAN Nos. 28504 and 28213.

19. Respondent has admitted liability to the two charges contained in CPAN No. 28504, Docket No. 04G-065EC. These violations of not having insurance on file with the Commission contrary to § 40-16-104, C.R.S., and no registration with the Commission contrary to § 40-16-103, C.R.S., are essentially the same charges contained in CPAN No. 28213, Docket No. 04G-096EC.

20. By admitting liability to the two violations contained in CPAN No. 28504, Respondent presumably has recognized responsibility for her actions. The voluntary acknowledgement of liability for the violations is a mitigating factor that should be taken into account by the Commission in assessing a penalty. Another mitigating factor is the fact that Respondent is an individual driver rather than a carrier. It is found that it is in the interests of justice to accept the admission of liability to the charges contained in CPAN No. 28504, 04G-065EC, and to dismiss the charges contained in CPAN No. 28213, Docket No. 04G-096EC.

21. Pursuant to § 40-6-109, C.R.S., it is recommended the Commission enter the following order.

III. ORDER**A. The Commission Orders That:**

1. Respondent's acknowledgement of liability to the charges contained in Civil Penalty Assessment Notice No. 28504, Docket No. 04G-065EC is accepted.

2. Respondent, Marla Dashiell shall within 30 days of the effective date of this Order pay to the Public Utilities Commission the total penalty amount of \$12,100.

3. The charges contained in Civil Penalty Assessment Notice No. 28213, Docket No. 04G-096EC 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