

Decision No. R04-1535

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-363EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

YOUSSEF MARRAKCHI & YOUNES MARRAKCHI, DOING BUSINESS AS ROYAL
LEGACY LIMOUSINE,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
ASSESSING CIVIL PENALTY**

Mailed Date: December 21, 2004

Appearances:

David M. Nocera, Esq., Assistant Attorney General, Denver,
Colorado, for Complainant, the Public Utilities Commission of the
State of Colorado; and

Youssef Marrakchi, *pro se*, for Respondents, Youssef Marrakchi
and Younes Marrakchi, doing business as Royal Legacy
Limousine.

I. STATEMENT

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondents, Youssef Marrakchi and Younes Marrakchi, doing business as Royal Legacy Limousine (Royal Legacy).

2. In Civil Penalty Assessment Notice (CPAN) No. 28460, Staff alleges that between December 16, 2003 and January 22, 2004, Royal Legacy violated various motor carrier safety regulations contained in Parts 391, 395, and 396 of Title 49 of the Code of Federal Regulations (CFR). With limited exceptions, these portions of the CFR (revised as of October 1, 1998) have been incorporated by reference into the Commission's Rules Regulating Safety for Motor Vehicle Carriers and Establishing Civil Penalties, 4 *Code of Colorado Regulations* (CCR) 723-15 (Safety Rules). *See*, 4 CCR 723-15-2.1. CPAN No. 28460 seeks imposition of a civil penalty in the total amount of \$6,000.00 for these alleged violations.

3. On July 30, 2004, the Commission issued an Order setting this matter for hearing on September 8, 2004 in Denver, Colorado. However, the hearing was continued to October 28, 2004, at Staff's request. *See*, Decision No. R04-0998-I.

4. The undersigned Administrative Law Judge (ALJ) called the matter for hearing at the assigned time and place. Staff appeared through its legal counsel and Royal Legacy appeared through Youseff Marrakchi, *pro se*. As a preliminary matter, Staff moved to dismiss Counts 1, 2, and 3 of CPAN No. 28460. That motion was granted.

5. During the course of the hearing testimony was received in support of Staff's case from Mr. Reinhardt Wolf, a Commission Compliance Investigator. Youseff Marrakchi submitted testimony on behalf of Royal Legacy. Exhibits 1 through 7 were identified, offered, and admitted into evidence. At the conclusion of the hearing the matter was taken under advisement.

6. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

II. FINDINGS OF FACT

7. Royal Legacy is a partnership consisting of Youseff and Younes Marrakchi. It previously provided luxury limousine services within Colorado pursuant to a registration (No. LL-01123) issued by the Commission. However, Royal Legacy discontinued its business in early April 2004 and its luxury limousine registration was revoked on or about April 11, 2004. At or about this time, the vehicles operated by Royal Legacy were sold and/or transferred to Centennial Limousine, Inc. (Centennial).

8. On May 24, 2004, Mr. Wolf conducted an audit of Royal Legacy's records and found a number of violations of the Safety Rules that had occurred prior to the time Royal Legacy discontinued its business. *See*, Exhibits 4 and 6. Mr. Wolf compared these violations with those that had been discovered by the Commission's Staff in connection with a prior audit of Royal Legacy conducted on September 9, 2002. *See*, Exhibits 1, 2, and 3. On the basis of this comparison, Mr. Wolf concluded that Royal Legacy had failed to correct various safety violations that had previously been brought to its attention. This led to the preparation of CPAN No. 28460. Youseff Marrakchi was personally served with the subject CPAN on July 13, 2004. *See*, Exhibit 5.

9. Regarding the specific allegations contained in CPAN No. 28460, Mr. Wolf testified that the records maintained by Royal Legacy in connection with driver Youseff Marrakchi did not contain a record of his motor vehicle traffic law violations for the preceding 12 months (Count 4), did not contain a record of his having successfully passed a road test (Count 5), and did not contain sufficient records to determine whether he had complied with applicable hours of service requirements (Counts 6 through 26). In addition, Mr. Wolf testified

that Royal Legacy's records concerning one of its vehicles did not contain the necessary preventative maintenance plan (Count 27).

10. In rebuttal, Mr. Marrakchi testified that he had no traffic law violations during the period in question and, as a result, believed that there was no reason for Royal Legacy to document that fact in its records. He testified that he presented Mr. Wolf a valid driver's license during the course of the May 24, 2004, audit. He submits that this constitutes sufficient evidence that he had successfully passed a road test. He also testified that he presented Mr. Wolf with "trip sheets" maintained by Royal Legacy for the period in question that were sufficient to establish that Royal Legacy had complied with the hours of service regulations. Finally, he testified that he was unaware of any requirement to retain vehicle maintenance records or maintenance plans relating to the vehicle referred to in Count 27 of CPAN No. 28460 and, therefore, disposed of such records shortly after the vehicle was transferred to Centennial.

III. DISCUSSION

11. As indicated previously, 4 CCR 723-15-2.1 incorporates various federal safety regulations into the Safety Rules. The Safety Rules apply to all intrastate motor vehicle carriers exempt from regulation as public utilities as defined in § 40-16-101(4), C.R.S. (Exempt Carrier). That statutory definition of Exempt Carrier includes "luxury limousine services." Therefore, Royal Legacy, a luxury limousine carrier, is subject to the Safety Rules cited in CPAN No. 28460.

12. As pertinent here, CFR Part 391.27 provides that Exempt Carriers shall require their drivers to prepare and furnish them with a list of all motor vehicle traffic law violations of which the driver has been convicted during the preceding 12 months. If the driver has not been convicted of any traffic law violations he must provide the Exempt Carrier a certificate to that

effect. The Exempt Carrier is then required to retain the list or certificate in the driver's qualification file.

13. CFR Part 391.31 precludes a person from operating a commercial motor vehicle without first completing a road test. In lieu of a road test, the driver may present, and an Exempt Carrier may accept, a valid Commercial Driver's License (CDL). The Exempt Carrier is required to retain either a certificate certifying that the driver successfully completed the road test or a copy of the driver's CDL in the driver's qualification file.

14. CFR Part 395.8 provides that Exempt Carriers shall require their drivers to record his/her duty status for each 24-hour period. The record is to be prepared by the driver on a specified grid or by using an automatic on-board recording system. As pertinent here, the duty status record is required to show whether the driver is off duty, is driving, or is on-duty but not driving.¹ The Exempt Carrier is required to retain a driver's duty status records for six months of its receipt of the same.

15. Finally, CFR Part 396.3(b)(2) requires Exempt Carriers to maintain a record indicating the nature and due date of the various inspection and maintenance operations to be performed on vehicles they control for 30 consecutive days or more. Such records are to be retained by the Exempt Carrier for at least six months after the involved vehicle leaves the Exempt Carrier's control.

16. An Exempt Carrier's intentional failure to comply with the above-described Safety Rules subjects it to a civil penalty of up to \$200.00 for each day's violation. *See*, 4 CCR 723-15-12.5 and 12.9. An Exempt Carrier is deemed to have committed an intentional violation

¹ The record is insufficient to determine whether Royal Legacy qualified for the more simplified duty status record requirements imposed by 4 CCR 723-15-7.2.2.

if, after having been issued a written notification of such violation, it violates the same provision again.

17. Commission enforcement personnel have authority to issue CPANs under § 40-7-116, C.R.S. That statute provides that the Commission has the burden of demonstrating a violation by a preponderance of the evidence.

18. Regarding Count 4 of CPAN No. 28460, it is undisputed that on May 24, 2004, the driver qualification file maintained by Royal Legacy in connection with driver Youseff Marrakchi did not contain a record of his motor vehicle traffic law violations, or a certificate that no violations had occurred, for the preceding 12 months as required by CFR Part 391.27. However, there is insufficient evidence in the record establishing that Royal Legacy was provided written notification of these requirements prior to that date. Therefore, its failure to comply with the certification requirement on that date cannot be deemed an intentional violation of that Safety Rule. For this reason, Staff has failed to establish by a preponderance of the evidence that Royal Legacy violated CFR Part 391.27 as alleged in Count 4 of CPAN No. 28460.

19. Regarding Count 5 of CPAN No. 28460, it is undisputed that on May 24, 2004, the driver qualification file maintained by Royal Legacy in connection with driver Youseff Marrakchi did not contain either a certificate certifying that he successfully completed a road test or a copy of his CDL as required by CFR Parts 391.31 and 391.33. The evidence establishes that Royal Legacy had previously been advised of these requirements. *See*, Exhibits 1 and 2. However, the ALJ is persuaded that Mr. Marrakchi provided Mr. Wolf with a valid CDL during the course of the May 24, 2004, audit. This constitutes substantial compliance with the

Safety Rule in question. For this reason, Royal Legacy did not violate CFR Parts 391.31 and 391.33 as alleged in Count 5 of CPAN No. 28460.

20. Regarding Counts 6 through 26 of CPAN No. 28460, it is undisputed that on the dates in question Royal Legacy failed to maintain records establishing that driver Youseff Marrakchi properly recorded his duty status as required by CFR Part 395.8. The trip sheets relied upon by Royal Legacy do not properly document Mr. Marrakchi's off-duty time and, as a result, do not provide sufficient information to determine whether he was in compliance with applicable hours of service requirements. In addition, the subject trip sheets do not conform to the methodology mandated by CFR Part 395.8 for recording a driver's duty status. The evidence establishes that Royal Legacy had previously been advised of this requirement. *See*, Exhibits 1 and 2. For this reason, Royal Legacy violated CFR Part 395.8 as alleged in Counts 6 through 26 of CPAN No. 28460.

21. Regarding Count 27 of CPAN No. 28460, it is undisputed that on May 24, 2004, Royal Legacy failed to maintain a record indicating the nature and due date of the various inspection and maintenance operations to be performed on one of its vehicles. However, there is insufficient evidence in the record establishing that Royal Legacy was in control of the involved vehicle for 30 consecutive days or more prior to this date as required by CFR Part 396.3(b). For this reason, Staff has failed to establish by a preponderance of the evidence that Royal Legacy violated CFR Part 396.3(b)(3) as alleged in Count 27 of CPAN No. 28460.

22. Section 40-7-113, C.R.S., authorizes the Commission to consider aggravating or mitigating circumstances surrounding particular violations in order to fashion a penalty assessment that promotes the underlying purpose of such assessments. These include, among

others, deterring future violations, motivating a carrier to come into compliance with the law, and punishing a carrier for prior, illegal behavior.

23. Based on the findings of fact and discussion above, the ALJ finds that the maximum \$200.00 civil penalty should not be assessed to Royal Legacy in connection with Counts 6 through 26 of CPAN No. 28460. In this regard, it is noted that this company has discontinued its business and no longer provides commercial luxury limousine services. Therefore, assessing a maximum penalty for these violations would not deter it from committing future violations. Nor would it motivate the carrier to come into compliance with the law. These mitigating factors dictate that the penalty to be assessed to Royal Legacy in connection with these violations be reduced to \$100.00 each.

IV. CONCLUSIONS

24. Counts 1, 2, and 3 of CPAN No. 28460 are dismissed.

25. Staff has not sustained its burden of proving the allegations contained in Counts 4, 5, and 27 of CPAN No. 28460 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

26. Staff has sustained its burden of proving the allegations contained in Counts 6 through 26 of CPAN No. 28460 by a preponderance of the evidence as required by § 40-7-116, C.R.S.

27. The mitigating factors discussed above warrant a reduction in the civil penalty for the violations described in Counts 6 through 26 of CPAN No. 28460 from \$200.00 to \$100.00.

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

1. Counts 1, 2, 3, 4, 5 and 27 of Civil Penalty Assessment Notice No. 28460 are dismissed.

2. Respondents, Youssef Marrakchi and Younes Marrakchi, doing business as Royal Legacy Limousine, are assessed a civil penalty in the amount of \$100.00 each in connection with Counts 6 through 26 of Civil Penalty Assessment Notice No. 28460. They shall pay the total assessed penalty of \$2,100.00 within ten days of the effective date of this Order.

3. 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.

4. 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.

5. 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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