

Decision No. R14-0655

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14V-0519CP

IN THE MATTER OF THE PETITION OF UNION TAXI COOPERATIVE, FOR AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE 6102 (DRIVER) OF THE RULES REGULATING TRANSPORTATION BY MOTOR VEHICLE 4 CCR 723-6.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
DISMISSING PETITION WITHOUT PREJUDICE**

Mailed Date: June 13, 2014

I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. On May 21, 2014, Union Taxi Cooperative (Union Taxi) filed the above-captioned Petition seeking a waiver of Rule 6102 of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6 for a Union Taxi driver, Abedu M. Ragu (Petition).

2. During its weekly meeting on May 28, 2014, the Commission referred this proceeding to an administrative law judge (ALJ) for disposition.

3. On June 2, 2014, the ALJ scheduled a hearing on the merits of the Petition for June 13, 2014 at 11:00 a.m. at the Commission's office in Denver, Colorado. Decision No. R14-0578-I.

4. The record shows that Union Taxi is a registered filer with the Commission's e-Filing System. The certificate of service for the Decision scheduling the hearing (Decision No. R14-0578-I) shows that on June 2, 2014, the Decision was provided to Union Taxi through

the Commission's e-filing system; at the same time, the Decision was also provided to Mr. Ragu by United States mail to the address provided for Mr. Ragu in the Petition. The ALJ finds that Union Taxi and Mr. Ragu had sufficient notice of the hearing. *See* Rule 1205(b) of the Rules of Practice and Procedure, 4 CCR 723-1.

5. At the date, time, and location designated for the hearing, the ALJ convened the hearing. No party appeared on behalf of Union Taxi or Mr. Ragu. The ALJ recessed the hearing for 15 minutes to allow Union Taxi and Mr. Ragu an additional opportunity to appear. Still, no party appeared.

6. Union Taxi and Mr. Ragu were put on notice that they carry the burden to prove the Petition should be granted and that they would need to submit evidence at the hearing to meet that burden. Decision No. R14-0578-I.

7. Neither Union Taxi nor Mr. Ragu made a filing seeking to continue the hearing; nor have they shown good cause for their failure to appear at the hearing.

8. Failing to appear at the hearing, notice of which was properly given, constitutes a failure to prosecute this matter thereby warranting dismissal of this proceeding. *See Rathbun v. Sparks*, 425 P.2d 296, 298-99 (1967) (plaintiff's failure to prosecute case with reasonable diligence warrants its dismissal).

9. The ALJ finds and concludes that Union Taxi and Mr. Ragu have failed to prosecute the Petition by failing to appear at the evidentiary hearing, notice of which was properly given to them both. The ALJ finds that their failure to prosecute the Petition warrants dismissal of the Petition.

10. For the foregoing reasons and authorities, the Petition should be dismissed without prejudice.

11. Pursuant to § 40-6-109, C.R.S., and for the foregoing reasons and authorities, the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the above discussion, the “Petition for Waiver/Variance of Safety Regulations-Driver” (Petition) filed by Union Taxi Cooperative for its driver, Mr. Abedu M. Ragu, in this proceeding is dismissed without prejudice.

2. Dismissal without prejudice means that the Petition may be re-filed.

3. Proceeding No. 14V-0519CP is closed.

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.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads "Doug Dean".

Doug Dean,
Director