

Decision No. R14-0675

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 14G-0085EC

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

COMPLAINANT,

V.

ROBERT JAMES DUDASH III IN HIS OFFICIAL CAPACITY AS
OWNER/OPERATOR/MANAGER OF 24/7 TRANSPORTATION, AND 24/7
TRANSPORTATION, LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
PAUL C. GOMEZ
ASSESSING CIVIL PENALTY;
ISSUING CEASE AND DESIST ORDER; AND,
GRANTING MOTION TO DEEM TESTIMONY
CONFIDENTIAL AND SEAL TRANSCRIPT**

Mailed Date: June 20, 2014

TABLE OF CONTENTS

I. STATEMENT.....	2
II. FINDINGS OF FACT	3
III. FINDINGS AND CONCLUSIONS	9
IV. ORDER.....	13
A. The Commission Orders That:	13

I. STATEMENT

1. The captioned proceeding was initiated on January 21, 2014, when the Staff of the Colorado Public Utilities Commission (Commission) issued Civil Penalty Assessment Notice (CPAN) No. 108277 to Robert James Dudash III in his official capacity as owner/operator/manager of 24/7 Transportation LLC and 24/7 Transportation, LLC (Respondent), alleging one violation of operating or offering to operate as a common carrier in intrastate commerce without a Commission certificate in violation of § 40-10.1-201(1), C.R.S.; and, one violation of failure to maintain and file with the Commission evidence of financial responsibility in sum, and in such form as the Commission may require in violation of § 40-10.1-107(1), C.R.S. The total amount of the civil penalty assessment for the above violation is \$13,310.00. Respondent was served with a copy of CPAN No. 108277 on January 21, 2014 by personal service.

2. On February 10, 2014, Staff of the Commission filed its entry of appearance in this matter through the Colorado Attorney General's Office.

3. On February 13, 2014, the Commission referred this matter to an Administrative Law Judge (ALJ) for disposition. The matter was subsequently assigned to the undersigned ALJ.

4. CPAN No. 108277 provides that if Respondent wishes to contest the allegations contained therein, or if Respondent does not pay the penalty amount within 10 days of its receipt of the CPAN, Respondent is obliged, within 15 days of such receipt, to contact the Commission to set the matter for hearing. In the absence of such a contact, CPAN No. 108277 provides that it will become a Complaint to Appear Notice and that the Commission will set a hearing date without regard to Respondent's wishes.

5. Respondent failed to respond to the CPAN by indicating it admits that it violated the law indicated by paying the civil penalty assessment within the time periods specified in CPAN No. 108277; nor has Respondent contacted the Commission to set a hearing date regarding the alleged violations contained in CPAN No. 108277. Therefore, it was found appropriate to set this matter for hearing on March 27, 2014 by Interim Decision No. R14-0245-I issued March 5, 2014.

6. At the scheduled date and time the evidentiary hearing was held. Appearances were entered by Commission Staff. Respondent did not appear. Hearing Exhibit Nos. 1 through 15 were entered into evidence. Testimony was received by an undercover Denver Police Department officer (DPD Officer)¹ and by Commission Transportation Criminal Investigator (CI) Brandt. At the conclusion of the hearing, the undersigned ALJ took the matter under advisement.

7. Pursuant to § 40-6-109, C.R.S., the ALJ hereby transmits to the Commission the record of this proceeding, a written recommended decision containing findings of fact and conclusions of law, and a recommended order.

II. FINDINGS OF FACT

8. The civil penalty assessments in this proceeding stem from alleged violations of § 40-10.1-201(1), C.R.S., for operating or offering to operate as a common carrier in intrastate commerce without operating authority, and a violation of § 40-10.1-107(1), C.R.S., for failure to maintain and file with the Commission, evidence of financial responsibility in such sum, and in

¹ As referenced in Staff's motion discussed in more detail *infra*, due to security concerns, the name of the DPD Officer and any identifying information is being withheld in this Decision.

such form as required by the Commission pursuant to 4 *Code of Colorado Regulations* (CCR) 723-6-6007(a)(i) of the Commission's Rules Regulating Transportation by Motor Vehicle.

9. The DPD Officer testified that Respondent had been under scrutiny since May of 2013 when the DPD began receiving complaints from citizens that Respondent was trying to pick them up and offer "party favors." The DPD also received complaints from taxicab companies that Respondent was stealing taxicab fares.

10. Specifically, the DPD Officer testifies that a victim came forward on June 24, 2013 and stated that he had received a cab ride from 9th and Lincoln Streets in Denver, and during that ride, Respondent notified the victim that he was kidnapped and robbed him of his money. Approximately \$150.00 to \$160.00 was stolen, as well as the victim's cell phone. The DPD Officer further testified that Respondent stated to the victim that he had a handgun and was going to take the victim to Lookout Mountain and kill him. Respondent indicated that he had done that in the past. During the course of DPD's investigation, it was determined that Respondent was operating the van in question. Additionally, during a photo lineup, the victim identified Respondent as the person who kidnapped and robbed him and made the statements as indicated above.

11. Hearing Exhibit Nos. 1 through 3 were entered into evidence through the DPD Officer.

12. Hearing Exhibit No 1 is a Case Sheet for Denver County Court Case No. 13GS005307 for Robert J Dudash for three violations including: impeding traffic; license plate violation; and, operating an unlawful taxicab. Hearing Exhibit No. 1 includes the summons and complaint issued to Respondent on July 17, 2013, a DPD report, and the arresting officer's arrest report, which indicates in relevant part that Respondent picked up a passenger at 20th and

Market Streets and offered to give the passenger a ride to I-70 and Kipling for a \$24.00 fee. The arresting officer noted that Respondent did not hold or produce a taxi permit and his van had no taxi equipment. Respondent subsequently pleaded no contest to a charge of operating as a taxi without a license and was fined \$146.00.

13. Hearing Exhibit No. 2 references Denver County Court Case No. 13G5013456. In that case, Respondent was arrested for and convicted of, operating as a taxi without a license on November 30, 2013. Respondent was fined \$46.00 and sentenced to ten days in jail, which was suspended. During the arrest and subsequent search of Respondent's van on November 30, 2013, the police found approximately \$13,300.00 in cash in the vehicle. After Respondent was read his Miranda rights, he stated to the arresting officer that he earned that money through his transportation of passengers.

14. The police report from that arrest also indicated that the DPD vice team had received numerous complaints on Respondent for operating as an illegal taxi and causing disturbances with taxi drivers. Other complaints were that Respondent had offered passengers drugs and/or sex with his female passenger.

15. Hearing Exhibit No. 3 references Denver County Court Case No. 13M11678. In that case, Respondent was again charged for operating as an illegal taxi; however, that charge was dismissed because the offense was a city charge which was on a state filing form, and the C.R.S. code for the charge did not match the description of the charge resulting in dismissal. However, that charge was subsequently brought back and Respondent pled not guilty to operating a taxi without a license. (*See*, hearing Exhibit No. 10). A jury trial was pending at the time of this hearing.

16. Hearing Exhibit No. 4 is a copy of Respondent's business card which was obtained by DPD during its investigation. The copy of the business card indicates that Respondent offered transportation service as a chauffeur, shuttle, and cab. Respondent represented on the business card that he was licensed and insured and that he also offered "party favors" as part of this transportation.

17. According to the DPD Officer's testimony, during 2013 and into 2014, DPD received information that Respondent continued to offer illegal taxicab services. As a result, DPD, along with Commission investigators worked undercover investigations involving Respondent. Using a cell phone number obtained from Craig's List (*see*, Hearing Exhibit Nos. 6 and 7), the DPD Officer contacted Respondent on January 17, 2014. During that contact by cell phone, the DPD Officer arranged transportation to the airport with Respondent for January 21, 2014 at 5:54 p.m.

18. The DPD Officer went on to testify that Respondent appeared at the pre-arranged location on January 21, 2014 in the light blue 1992 Ford passenger he used in the past to illegally transport passengers. The DPD Officer then paid Respondent \$60.00 for the ride to the airport. At that time, the DPD Officer indicated he needed to go inside his apartment. At that time, the DPD Officer gave a pre-arranged signal to waiting police officers who then arrested Respondent. During a search of Respondent's person, police officers recovered the \$60.00 paid by the DPD Officer, which had been marked prior to the transaction. In addition, \$4,000.00 was also found on Respondent's person. The DPD Officer stated that at the time of Respondent's arrest on January 21, 2014, CI Brandt was at the scene and served Respondent with papers, although he could not positively identify those papers.

19. Subsequently, the DPD Officer prepared Criminal Summons and Complaint (CS&C) paperwork for Case 14M00671 (Hearing Exhibit No. 8) related to the arrest on January 21, 2014 of Respondent in the 100 block of West 12th Avenue in Denver, Colorado. According to the CS&C, Respondent was charged with a violation of § 40-10.1-201(1), C.R.S., for failure to possess a valid certificate to provide common carrier service.

20. Attached to the CS&C was a Statement of Probable Cause (SPC) completed by the DPD Officer. The SPC indicated that Respondent had been cited on three previous occasions for operating without a taxi license. The SPC also detailed the DPD Officer's efforts in setting up a ride with Respondent on January 21, 2014 and the subsequent arrest as detailed *supra*. Respondent pled guilty to the charge.

21. The DPD Officer indicated that since Respondent's arrest on January 21, 2014, he continued to operate illegal taxi service. On February 2, 2014, Respondent was observed picking up several people in the 1200 block of 14th Street in Denver. After contact was made by DPD, it was determined that Respondent was providing transportation service to the several occupants of Respondent's van. Respondent once again pled no contest to failure to have a valid taxi license and was fined \$50.00 (*see*, Hearing Exhibit No. 9).

22. CI Brandt testified on behalf of Staff. CI Brandt testified that an investigation was opened regarding Respondent based on a consumer complaint that Respondent was acting as a common carrier without a permit. Based on a license plate number provided by the complaining parties, CI Brandt was able to determine through a Colorado Department of Motor Vehicles records search that the vehicle in question belonged to Respondent. CI Brandt then searched Commission records to determine that Respondent did not hold any operating authority to provide transportation service for passengers.

23. CI Brandt further determined that Respondent violated § 40-10.1-201, C.R.S., by providing common carrier transportation service without Commission authorization. It was further determined that Respondent was in violation of 4 CCR 723-6-6007 for failure to have proof of insurance on file with the Commission.

24. On November 20, 2013, CI Brandt prepared a Notice of Violation and a Violation Warning letter indicating to Respondent that he was in violation of § 40-10.1-201(1) and Rule 6007, and directing Respondent to cease and desist his transportation activities, including any advertising for such activity or be subject to penalties of \$13,000 and possible criminal prosecution. (*See*, Hearing Exhibit No. 11).

25. On the evening of November 20, 2013, CI Brandt and CI Chesher made contact with Respondent at the corner of 16th and Market Streets. Respondent solicited CIs Brandt and Chesher and they accepted a ride to Civic Center Station. Upon arrival at Civic Center Station, Respondent requested a fare of \$12.00 for the ride. At that time, the CIs indentified themselves to Respondent. After Respondent confirmed his identity to the CIs, CI Chesher handed an envelope to Respondent which contained the Notice of Violation and Violation Warning letter. Respondent accepted the envelope, according to CI Brandt.

26. CI Brandt testified that Respondent continued to provide illegal taxi service after issuance of the Notice of Warning. Hearing Exhibit No. 12 consists of various e-mails between CI Brandt and a second complainant (a taxi driver) including photographs complainant supplied showing what was identified as Respondent's van (*see*, Hearing Exhibit No. 13 – Colorado Department of Motor Vehicles report providing information on the make, model, color, and license plate of Respondent's van) in the vicinity of Market and Blake Streets. The e-mails occurred between November 27, 2013 and December 16, 2013.

27. The second complainant indicated to CI Brandt that he had seen Respondent driving around downtown every night and was familiar with what the van looked like. The second complainant also stated to CI Brandt that the van drove erratically at times and ran red lights on several occasions.

28. Based on the information received, CI Brandt prepared CPAN No. 108277 on December 4, 2013. Attempts by the CIs to serve the CPAN on Respondent were unsuccessful. As a result, CI Brandt contacted DPD and learned of an ongoing investigation involving Respondent's illegal taxi operations. CI Brandt worked in cooperation with DPD and participated in the undercover operation by DPD discussed *supra*.

29. CI Brandt amended the CPAN to reflect the date of January 17, 2014 when it was determined that the CPAN could be served on Respondent as part of the DPD undercover operation. (*See*, hearing Exhibit No. 15). CI Brandt was with DPD on the afternoon of January 17, 2014 when Respondent was arrested for attempting to provide transportation to the DPD Officer. Because Respondent was in handcuffs at that time, CI Brandt testified that she indicated that she explained the allegations contained in the CPAN and the arresting officer took the envelope and placed it in Respondent's front coat pocket and indicated to Respondent what it was and that it would be available for him to read at a later time. Consequently, CI Brandt was satisfied that Respondent had been properly served with CPAN No. 108277.

III. FINDINGS AND CONCLUSIONS

30. 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. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its

non-existence. *Swain v. Colorado Department of Revenue*, 717 P.2d 507 (Colo. App. 1985). A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.

31. Pursuant to Commission Rule 4 CCR 723-1-1302(b) of the Rules of Practice and Procedure:

The Commission may impose a civil penalty when provided by law. The Commission will consider any evidence concerning some or all of the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent’s culpability;
- (III) the respondent’s history of prior offenses;
- (IV) the respondent’s ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent’s ability to continue in business;
- (VII) the size of the business of the respondent; and
- (VIII) such other factors as equity and fairness may require.

32. Section 40-10.1-201(1), C.R.S., states as follows:

A person shall not operate or offer to operate as a common carrier in intrastate commerce without first having obtained from the commission a certificate declaring that the present or future public convenience and necessity require or will require such operation.

33. Section 40-10.1-107(1), C.R.S. states as follows:

Each motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.

34. Commission Rule 4 CCR 723-6-6007(a)(I) provides in relevant part as follows:

Motor vehicle liability coverage. Every motor carrier shall obtain and keep in force at all times motor vehicle liability insurance coverage or a surety bond providing coverage that conforms with the requirements of this rule. Motor vehicle liability means liability for bodily injury and property damage.

35. The evidence in this matter overwhelmingly shows that Respondent has no regard for the law or the safety of the public. His repeated acts of operating an illegal taxi service for personal gain are indicative of his total lack of regard. Repeated citations and arrests by DPD have apparently had little effect on Respondent and have failed to serve as a deterrent to stop his illegal activities.

36. The testimony and evidence provided by the DPD Officer indicates beyond any doubt that Respondent over and over again, has provided taxi service illegally, including on January 17, 2014. CI Brandt's corroborating testimony merely solidifies the mountain of evidence against Respondent that he operated an illegal taxi service not only on January 17, 2014, but on numerous occasions prior to that as well. It is not necessary to go over that testimony again as Respondent's culpability is clear and convincing. Obviously, Staff has gone beyond the preponderance of evidence standard required here in order to meet its burden of proof.

37. The evidence of record in this proceeding clearly shows that Respondent violated §§ 40-10.1-201(1) and 40-10.1-107(1), as well as Commission Rule 6007(a)(I) on January 17, 2014. Regarding the considerations pursuant to Rule 1302(b) in assessing a civil penalty, it is found that given the nature, circumstances, and gravity of the violations, as well as the degree of the respondent's culpability, and the respondent's history of prior offenses, the maximum civil penalty assessment will be imposed. Clearly, Respondent represents a public nuisance and a clear threat to public safety. Given the gravity of the circumstances, here, the remaining factors

under Rule 1302(b) will not be considered. Therefore, Respondent will be assessed the full amount of \$13,310.00 provided by CPAN No. 108277.

38. The aggravating factors that require the imposition of the full civil penalty amount are numerous and set out in detail *supra*. Respondent's repeated and egregious offenses, including the fact that he allegedly offered drugs and prostitutes to his passengers from time-to-time add to the aggravating circumstances of this case. No factors in mitigation can be found.

39. Staff also requests a cease and desist order be issued regarding Respondent's illegal activities. Good cause is found to issue such an order. Consequently, Respondent will be ordered to cease and desist from offering to provide or providing taxi-like transportation service within the State of Colorado in violation of § 40-10.1-201(1), or any other applicable statute or Commission regulation regarding the provision of transportation service of passengers. Any violation of this cease and desist order will subject Respondent to all remedies available at law, including but not limited to remedies available pursuant to article 7 and article 10.1 of Title 40 of the Colorado Public Utilities Laws. Staff will be authorized to use all means available to it under the law to enforce this cease and desist order.

40. On April 4, 2014, Staff also filed a Motion to Deem Testimony Presented During the April 2, 2014 Hearing as Confidential and Seal Transcript. As discussed *supra*, a Staff witness in this proceeding is a Denver Police Department undercover detective. Staff, concerned with the consequences of revealing the witnesses identity, requests that any transcript prepared in this proceeding be afforded confidential treatment pursuant to Commission Rule 4 CCR 723-1-1100 of the Commission's Rules of Practice and Procedure. Staff requests that in the event Respondent files exceptions to this Decision and requests a transcript of the proceeding,

the transcript not be made available to any party not subject to the confidential treatment of the transcript.

41. Good cause is found to grant the relief requested by Staff. Certainly, maintaining the confidentiality of its witness is of the utmost importance and in the public interest. Therefore, the transcript in this matter will be afforded extraordinary protection and sealed pursuant to Rule 1100(g). In the event a transcript is requested in this proceeding, any party who participated in this proceeding must execute a non-disclosure agreement in order to receive a copy. Upon the final disposition of this matter, if exceptions are filed, all transcripts must be returned to the Commission.

42. In the event no exceptions are filed, the record in this matter will be sealed and be unavailable to the public without proper authorization from appropriate Commission Transportation Staff except pursuant to a Colorado Open Records Act request.²

43. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. The Commission Orders That:

1. The full civil penalty of \$13,310.00 shall be assessed against Robert James Dudash III in his official capacity as owner/operator/manager of 24/7 Transportation, LLC, and 24/7 Transportation, LLC (Respondent).

2. The civil penalty of \$13,310.00 shall be due and payable no later than ten days after the effective date of this Decision.

² In the event such a request is made, any references in the transcript to the undercover DPD officer are to be redacted.

3. Failure to pay the \$13,310.00 civil penalty by the due date shall subject Respondent to all remedies at law available to the Colorado Public Utilities Commission.

4. Respondent is hereby ordered to cease and desist from offering to provide or providing illegal transportation service within the State of Colorado in violation of § 40-10.1-201(1), C.R.S., or any other applicable statute or Commission regulation regarding the provision of transportation service of passengers.

5. Commission Staff's Motion to Deem Testimony Presented During the April 2, 2014 Hearing as Confidential and Seal Transcript is granted consistent with the discussion above.

6. Any official transcript of this proceeding shall be afforded extraordinary protection pursuant to Commission Rule 4 *Code of Colorado Regulations* (CCR) 723-1-1100 and designated as Highly Confidential and sealed by the Director of the Commission in conformance with Rule 4 CCR 723-1-1100(g).

7. 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.

8. As provided by § 40-6-106, 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 recommended 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 a basic finding 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.

9. If exceptions to this Recommended 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

PAUL C. GOMEZ

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director