

Decision No. R20-0231

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19G-0715CP

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

JONTAY BYRON THOMAS DOING BUSINESS AS HALF PRICE TAXI,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
ASSESSING CIVIL PENALTY, ISSUING CEASE AND
DESIST ORDER, AND CLOSING PROCEEDING**

Mailed Date: April 10, 2020

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I. PROCEDURAL HISTORY

1. On December 13, 2019, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 125283, which alleges one violation by Jontay Byron Thomas, doing business as Half Price Taxi (Respondent), each of §§ 40-10.1.107(1), 202(1)(a), C.R.S., on December 11, 2019. The underlying factual basis for each count of the CPAN is that Respondent operated or offered to operate as a taxicab carrier without first obtaining a permit from the Commission and maintaining and filing evidence of financial responsibility with the Commission. CPAN No. 125283 states that the civil penalty assessed for the alleged violations is \$12,100, plus an additional 15 percent surcharge, for a total of \$13,915.00, but that if Respondent pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$6,957.50. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the “Total Amount” of \$13,915.00.¹ The CPAN also states that the Commission may order Respondent to cease and desist from violating statutes and Commission rules.²

2. The CPAN states that the Commission personally served the CPAN on Respondent on December 13, 2019.

¹ CPAN No. 125283 at 1.

² *Id.* at 1 and 3.

3. Respondent has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

4. On January 2, 2020, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

5. On January 6, 2020, counsel for Trial Staff of the Commission (Staff) entered an appearance in this proceeding. On the same day, Staff filed a Motion to Amend CPAN (Motion to Amend) to modify the count in the amount alleging that Respondent violated § 40-10.1-202(1)(a), C.R.S. Instead of alleging a violation of that statutory provision, Staff requested to allege that Respondent violated § 40-10.1-201(1), C.R.S., by operating or offering to operate as a common carrier without a Certificate of Public Convenience and Necessity (CPCN).

6. On January 23, 2020, the ALJ issued Decision No. R20-0051-I that granted the Motion to Amend, established a prehearing schedule for the disclosure of witnesses and exhibits, and scheduled the hearing for March 12, 2020 at 9:00 a.m. The Commission served Decision No. R20-0051-I on Respondent by first-class U.S. mail at “85 Scotland Road, Apartment 143, Pueblo, CO 81001.”

7. On January 29, 2020, the envelope containing Decision No. R20-0051-I was returned to the Commission with the following printed on a yellow strip on the envelope:

RETURN TO SENDER
NO SUCH NUMBER
UNABLE TO FORWARD

8. On February 7, 2020, Staff filed its witness and exhibit list and marked exhibits as required by Decision No. R20-0051-I. Respondent never filed its witness and exhibit list and marked exhibits, as required by Decision No. R20-0051-I.

9. On March 12, 2020, the hearing took place as scheduled. Neither Mr. Thomas nor anybody else appeared on behalf of Respondent at the scheduled time. As a result, the ALJ took a recess to allow Respondent more time to appear. However, Respondent did not appear when the ALJ reconvened the hearing. Neither the ALJ nor any member of Staff had received any communication from Mr. Thomas or anybody purporting to represent Respondent requesting that the hearing be continued. As a result, the hearing went forward as scheduled.

10. At the hearing, Investigator Joe O’Haver testified on behalf of Staff. Exhibit Nos. 1 through 8 were admitted into the evidentiary record. At the conclusion of the hearing, the ALJ took the matter under advisement.

11. In reaching this Recommended Decision, the ALJ has considered all arguments presented, including those arguments not specifically addressed in this Decision. Likewise, the ALJ has considered all evidence presented at the hearing, even if the evidence is not specifically addressed in this Decision.

II. FINDINGS OF FACT

A. Investigation No. 123505

12. In the summer of 2019, PUC Investigative Staff received a complaint that Respondent was operating as a taxi carrier without authority in the Colorado Springs area. Commission Criminal Investigators Adam String and Nate Riley travelled to Colorado Springs and requested a ride from Respondent by calling a telephone number (706-244-8524) obtained

from the website of Respondent.³ Mr. Thomas appeared at the pick-up address identified by Investigators String and Riley to provide the ride that Investigator String had requested in the telephone conversation. Investigators String and Riley confirmed Mr. Thomas' identity by requesting him to produce identification. In response, Mr. Thomas produced his Colorado driver's license, which listed "85 Scotland Rd Apt 143, Pueblo, CO 81001" as Mr. Thomas' address.⁴

13. Because Respondent did not have a Commission-issued authority to provide taxicab or any other transportation service, Investigator String issued a warning letter dated July 17, 2019 to Respondent for violating §§ 40-10.1-107(1), 201(1), 202(1)(a), 302(1)(a), and 606(1).⁵ The warning letter identified both the investigation number (123505) and the violations noted above and stated that "future violations may result in civil penalties and/or criminal prosecution."⁶

B. Investigation that Led to CPAN No. 125283

14. In December 2019, the Commission received a complaint from a taxi company stating that Respondent was providing taxi service without Commission authorization. Specifically, the complainant stated that it had received a request for taxi service by a driver whose vehicle had broken down on I-25. When the competitor arrived to pick up the stranded motorist, the motorist was getting into a vehicle with a Half Price Taxi sign on it.

15. Investigator O'Haver searched the Commission's records and did not find any evidence that Respondent held any authority from the Commission to provide transportation

³ Exhibit 5. See also <https://halfpricetaxi.business.site/>.

⁴ Exhibit 4.

⁵ Exhibit 3.

⁶ *Id.*

service. Investigator O’Haver also searched the Colorado Secretary of State’s business records but did not find any evidence that Respondent had filed any documents establishing Half Price Taxi as a business entity.⁷ Investigator O’Haver repeated the search of the Colorado Secretary of State’s business entity website on March 10, 2020 with the same result.

16. Investigator O’Haver also visited Respondent’s website at:

<https://halfpricetaxi.business.site/>

Investigator O’Haver printed advertisements for taxi service, including “special” reduced fares that allegedly reduced rates for trips to marijuana dispensaries in Pueblo, Colorado.⁸ The website also included a picture of a vehicle with a Half Price Taxi sign and two telephone numbers. One of the telephone numbers (706-244-8524) was the one that Investigators String and Riley called to arrange the ride in July 2019 during Investigation No. 123505. Investigator O’Haver subsequently checked the telephone number using an investigative tool and confirmed that Mr. Thomas is listed as the owner of the number.

17. On December 11, 2019, Investigator O’Haver and another investigator from the Commission travelled to Colorado Springs. They called 719-499-2638, which was listed on Respondent’s website (<https://halfpricetaxi.business.site/>) as the telephone number to call to order transportation service. The call was not answered, so Investigator O’Haver left a voicemail. Soon thereafter, Investigator O’Haver received a text message stating:

You’ve reached half price taxi please provide us with the pickup address and the address [*sic*] you are going to and how many passengers thanks [*sic*] you for choosing half price taxi.⁹

⁷ Exhibit 1.

⁸ Exhibit 2.

⁹ Exhibit 6.

Investigator O'Haver responded by text message and provided the same pickup address and destination that were used in Investigation No. 123505. Investigator O'Haver received the following two text messages in response:

We currently dont [*sic*] have any taxis in your area at the moment
Sorry for thr [*sic*] inconvenience.¹⁰

18. Investigator O'Haver waited a short period of time and then texted the same telephone number from a different telephone and requested a ride to Denver International Airport (DIA) from the Baymont Hotel at 1055 Kelly Johnson Drive in Colorado Springs. The reply stated that it would cost \$160, which would have to be paid upfront when the vehicle arrived at the Baymont Hotel, and then asked how many passengers there would be. Investigator O'Haver sent a text accepting the terms and stating that there would be two passengers. Investigator O'Haver then received text messages from the same telephone number stating that Investigator O'Haver would be picked up in approximately ten minutes and asking for a description of Investigator O'Haver. Investigator O'Haver responded that he was wearing an orange shirt.

19. No vehicle arrived to pick up Investigator O'Haver. As a result, Investigator O'Haver cancelled the trip request.

C. CPAN No. 125283

20. On December 13, 2019, Inspector O'Haver signed CPAN No. 125283 described in paragraph 1 above. On the same day, Inspector O'Haver personally served Mr. Thomas with a copy of the CPAN at the El Paso County Courthouse at 210 Tejon Street in Colorado Springs. Investigator O'Haver had received information that Mr. Thomas had a court hearing on that date and at that location. Investigator O'Haver decided to serve Mr. Thomas with the CPAN at the

¹⁰ *Id.*

courthouse because he believed there was a good chance Mr. Thomas would appear for the hearing and Investigator O’Haver previously had difficulty locating Mr. Thomas. Mr. Thomas refused to sign the statement on the CPAN acknowledging his receipt of it.

21. After Investigator O’Haver served Respondent with the CPAN and explained to him the counts, Mr. Thomas stated that he was aware of the Commission and other words to the effect that “you can’t prove it was me.” Investigator O’Haver understood Mr. Thomas’ reply to be an acknowledgment that he had continued to operate as a taxicab service carrier without Commission authority after the July 17, 2019 warning letter.

22. There is no evidence that anybody other than Mr. Thomas is affiliated with Half Price Taxi. During the investigation that culminated in the July 17, 2019 warning letter, Investigators String and Riley obtained the telephone number that they used to communicate with Mr. Thomas from <https://halfpricetaxi.business.site/>. Likewise, during the investigation that culminated in CPAN No. 125283, Investigator O’Haver obtained the telephone number to which he sent and received the text messages noted above from the same website. Based on this uncontradicted evidence, the ALJ finds that Mr. Thomas was the person with whom Investigator O’Haver corresponded by text messages concerning the ride from the Baymont Hotel in Colorado Springs to Denver International Airport.

III. CONCLUSIONS OF LAW

A. Jurisdiction

23. The CPAN, as amended, alleges violations of §§ 40-10.1-107(1), 201(1), C.R.S.¹¹ Section 40-7-116(1)(a), C.R.S., specifies that “[i]nvestigative personnel of the

¹¹ See Exhibit 7.

commission . . . have the authority to issue civil penalty assessments for the violations,” of among other things, §§ 40-10.1.107(1) and 201(1), C.R.S. Accordingly, the Commission has subject matter jurisdiction over this proceeding.

24. In addition, as noted above, Mr. Thomas was personally served with CPAN No. 125283.¹² The Commission thus has personal jurisdiction over Respondent.

25. Finally, Respondent was also served with timely and adequate notice of the evidentiary hearing scheduled in Decision No. R20-0051-I. The fact that Decision No. R20-0051-I was returned to the Commission as undeliverable does not mean that notice of the hearing was deficient for several reasons. First, Decision No. R20-0051-I was served via U.S. Mail to the address identified on the Colorado Driver’s License produced by Mr. Thomas in July 2019 during Investigation No. 123505. The fact that the U.S. Postal Service returned the envelope containing Decision No. R20-0051-I with the instruction that “no such number” exists suggests that the address provided by Mr. Thomas to the Colorado Division of Motor Vehicles and Investigators String and Riley in Investigation No. 123505 is false.

26. Second, CPAN No. 125283 stated that if Respondent chose to contest one or all of the counts identified therein, he was required to contact the Commission by 5:00 p.m. of the 15th day after service of the CPAN to schedule the hearing. The CPAN then states:

If you fail to contact the Commission to schedule the hearing by 5:00 p.m. of the 15th day after your receipt of this Civil Penalty Assessment Notice, the Commission will set the hearing date and notify you of the hearing date.¹³

¹² Exhibit 8. *See also* § 40-7-116(1)(b), C.R.S. (stating that service by certified mail is permissible).

¹³ CPAN No. 125283 at 3.

Thus, Respondent knew the procedure for setting the hearing and the time within which it would be set. He never contacted the Commission to schedule the hearing or to inquire about the date for the hearing.

27. Third, it would be perverse to conclude that notice of the hearing in this proceeding was insufficient because the Respondent provided an incorrect address in a Commission investigation that led to a CPAN for operating as a common carrier without a Commission-issued authority. Commission rules require a common carrier providing transportation service pursuant to Commission-issued authority to provide its address and the address of its agent for service of process to the Commission and to keep those addresses updated.¹⁴ Thereafter, service upon the designated agent identified by the carrier is deemed to be valid service upon the carrier and *prima facie* evidence that the carrier received the notice.¹⁵ Under these circumstances, the ALJ finds and concludes that mailing Decision No. R20-0051-I to the address supplied by Mr. Thomas in Investigation No. 123505 provided adequate notice to Respondent of the evidentiary hearing that took place on March 12, 2020.

B. Burden of Proof

28. Staff bears the burden of proving its case by a preponderance of the evidence.¹⁶ Conversely, Respondent bears the burden of proving any affirmative defense by a preponderance of the evidence.¹⁷ In both cases, the evidence must be “substantial evidence,” which is defined as “such relevant evidence as a reasonable [person’s] mind might accept as adequate to support a

¹⁴ Rules 6005(b) of the Rules Regulating Transportation by Motor Vehicle, 4 *Code of Colorado Regulations* (CCR) 723-6.

¹⁵ Rule 6006, of the Rules Regulating Transportation by Motor Vehicle, 4 CCR 723-6.

¹⁶ Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 1200 of the Rules of Practice and Procedure, 4 CCR 723-1.

¹⁷ *Western Distributing Co. v. Diodoso*, 841 P.2d 1053, 1057-1059 (Colo. 1992).

conclusion ... it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury.”¹⁸ A party has satisfied its burden under this standard when the evidence, on the whole, tips in favor of that party.

C. Alleged Violation of § 40-10.1-107(1), C.R.S.

29. Section 40-10.1-107(1) states that “[e]ach motor carrier shall maintain and file with the commission evidence of financial responsibility in such sum, for such protection, and in such form as the commission may by rule require as the commission deems necessary to adequately safeguard the public interest.” A “motor carrier” is “any person owning, controlling, operating, or managing a motor vehicle that provides transportation in intrastate commerce pursuant to this article; except that the term does not include a transportation network company, as defined in section 40-10.1-602 (3), or a transportation network company driver, as defined in section 40-10.1-602 (4).”¹⁹ Under Colorado law, a “transportation network company” (TNC) is “a corporation, partnership, sole proprietorship, or other entity, operating in Colorado, that uses a digital network to connect riders to drivers for the purpose of providing transportation”²⁰ and a TNC driver is “an individual who uses his or her personal vehicle to provide services for riders matched through a [TNC’s] digital network.”²¹ Pursuant to Rule 6008(a)(I) of the Commission’s Transportation Rules, a “motor carrier” is required to maintain a minimum level of financial responsibility of \$500,000 in the form of motor vehicle liability insurance or a surety bond.²²

¹⁸ *City of Boulder v. Pub. Utils. Comm’n*, 996 P.2d 1270, 1278 (Colo. 2000) (quoting *CF&I Steel, L.P. v. Pub. Utils. Comm’n*, 949 P.2d 577, 585 (Colo. 1997)).

¹⁹ § 40-10.1-101(10).

²⁰ § 40-10.1-602(3).

²¹ § 40-10.1-602(4).

²² 4 CCR 723-6.

30. Here, the ALJ concludes based on the evidence presented at the hearing that: (a) Respondent was operating as a “motor carrier of passengers” because he owned, controlled, operated, or managed a motor vehicle that provided transportation service to passengers in intrastate commerce; (b) Respondent was not operating as a TNC or a TNC driver because there is no evidence he employed a digital network to connect riders to him; and (c) Respondent did not maintain a minimum level of financial responsibility of \$500,000 in the form of motor vehicle liability insurance or a surety bond. Accordingly, the ALJ concludes that Respondent violated § 40-10.1-107(1), C.R.S.

D. Alleged Violation of § 40-10.1-201(1), C.R.S.

31. Section 40-10.1-201(1), C.R.S., states that “[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 requires or will require such operation” (CPCN). Under Colorado law, a large-market taxicab provider is not a common carrier.²³ “Large-market taxicab service” is defined as:

indiscriminate passenger transportation for compensation in a taxicab on a call-and-demand basis, within and between points in the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, and Weld, and between those points and all points within the state of Colorado, with the first passenger in the taxicab having exclusive use of the taxicab unless the passenger agrees to multiple loadings.²⁴

Starting on January 1, 2019, a provider of large-market taxicab service was required to obtain a permit from the Commission, not a CPCN.²⁵

²³ § 40-10.1-101(4)(c), C.R.S. (“‘Common carrier’ . . . does not include: . . . (c) A motor carrier of passengers providing large-market taxicab service under part 7 of this article 10.1.”).

²⁴ § 40-10.1-101(9.5), C.R.S.

²⁵ § 40-10.1-702(1)(a), C.R.S.

32. Here, Staff contends that Respondent was providing taxicab service. According to Investigator O’Haver, the original complaint received by the Commission was that Respondent was providing “gypsy taxicab” service. Further, in arguing in favor of the maximum penalty in this proceeding, Investigator O’Haver repeatedly stated that Respondent provided illegal taxicab service. In short, Staff never alleged that Respondent offered any transportation service other than taxicab service.

33. In addition, the facts established by Staff only support the conclusion that Respondent offered large-market taxicab service on December 11, 2019. Specifically, Staff established that Respondent’s business name is Half Price Taxi and Respondent operates a website entitled <https://halfpricetaxi.business.site/>.²⁶ There is no evidence that Respondent operated any other company that offers any other type of transportation service on December 11, 2019. Staff also proved that on December 11, 2019, Respondent offered passenger transportation for compensation in a taxicab on a call-and-demand basis between points in the Counties of El Paso (Baymont Hotel at 1055 Kelly Johnson Drive in Colorado Springs) and Denver (DIA). The facts established at the hearing do not support the conclusion that Respondent offered any other type of transportation service on December 11, 2019. Based on the foregoing, the ALJ concludes that on December 11, 2019: (a) Respondent offered large-market taxicab service to Investigator O’Haver;²⁷ (b) Respondent did not offer transportation services as a common carrier

²⁶ See Exhibits 2, 5, 6. See also Rule 6005(a), 4 CCR 723-6 (“No Person shall operate under a name or trade name that identifies a transportation service not currently authorized by its Certificate or Permit (e.g., a Limited Regulation Carrier or a Common Carrier with only Call-and-Demand Shuttle Service, shall not have taxi in its name”).

²⁷ § 40-10.1-101(9.5), C.R.S.

to Investigator O'Haver;²⁸ (c) Respondent was required to have a Commission-issued permit, and not a CPCN, to provide the large-market taxicab service it offered to Investigator O'Haver.²⁹

34. Accordingly, the ALJ cannot conclude that Respondent violated § 40-10.1-201(1), C.R.S.

E. Penalty

35. Having concluded that Respondent violated § 40-10.1-107(1), C.R.S., it is necessary to determine the amount of the civil penalty to be assessed. Rule 1302(b) of the Commission's Rules of Practice and Procedure provides:

- (b) 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.³⁰

36. Section 40-10.1-112(1), C.R.S., provides in relevant part that:

Except as specified in subsection (3) of this section [relating to summary suspensions of certificates and permits], the commission, at any time, by order

²⁸ § 40-10.1-101(4)(c), C.R.S.

²⁹ § 40-10.1-702(1)(a), C.R.S.

³⁰ 4 CCR 723-1.

duly entered, after hearing upon notice to the motor carrier and upon proof of violation, may issue an order to cease and desist . . . for the following reasons:

(a) A violation of this article . . .

37. Here, factors I through III and V of Rule 1302(b) weigh heavily against Respondent. The gravity of the violation is substantial, as requiring regulated transportation providers to maintain financial responsibility is critical to protecting the public. Respondent is also highly culpable given Respondent's prior offenses for which Respondent received a detailed warning letter on July 17, 2019 that Respondent chose to ignore. Finally, Respondent has not made any efforts to comply with the law governing transportation services, much less good-faith efforts. Instead, Respondent has disregarded the law.

38. No evidence of mitigating factors was presented at the hearing.

39. Based on the foregoing, the ALJ concludes that the nature, aggravating circumstances, gravity of the violation of § 40-10.1-107(1), C.R.S., and lack of any effort by Respondent to comply with the law regulating transportation, warrant assessment of the maximum civil penalty of \$12,650, including the 15 percent surcharge.

40. Finally, as noted, Respondent has displayed disregard for the law regulating transportation services. Based on substantial evidence in the record proving the violation by Respondent and the aggravating factors found in this Decision, therefore, Respondent will be ordered to cease and desist from violating § 40-10.1-107(1), C.R.S.

41. Pursuant to § 40-6-109(2), C.R.S., the ALJ recommends that the Commission enter the following order.

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

1. Jontay Byron Thomas, doing business as Half Price Taxi (Respondent) is assessed a civil penalty in the amount of \$500.00 for its violation in Count 1 stated in Amended Civil Penalty Assessment Notice No. 125283, with an additional 15 percent surcharge, for a total amount of \$12,650.00.

2. Not later than 30 days following the date of the final Commission decision issued in this Proceeding, Respondent shall pay to the Commission the civil penalty and the surcharge assessed in Ordering Paragraph No. 1.

3. Respondent is hereby ordered to cease and desist, as of the effective date of this Decision, from violating § 40-10.1-107(1), C.R.S.

4. Proceeding No. 19G-0715CP is closed.

5. 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.

6. 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.

7. 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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director