

Decision No. R04-0919-I

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04F-219CP

RDSM TRANSPORTATION, LTD., D/B/A YELLOW CAB COMPANY OF COLORADO
SPRINGS,

COMPLAINANT,

V.

SAMJA'S ENTERPRISES, INC., D/B/A EXPRESS AIRPORT TAXI/EXPRESS TAXI,

RESPONDENT.

**INTERIM ORDER OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING MOTION FOR
DISCOVERY SANCTIONS, IN PART**

Mailed Date: August 5, 2004

I. STATEMENT

1. On July 16, 2004, Complainant, RDSM Transportation, Ltd., doing business as Yellow Cab Company (RDSM), filed a Motion for Sanctions (Motion) in the captioned matter. The Motion requests that sanctions be imposed against Respondent, Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi (Express Taxi), in connection with certain discovery directed to it by RDSM. Express Taxi filed its Response to the Motion on July 19, 2004.

2. On July 23, 2004, the undersigned administrative law judge (ALJ) denied the Motion, in part. *See*, Decision No. R04-0849-I. However, that portion of the Motion requesting

sanctions as a result of Express Taxi's failure to produce driver trip sheets and dispatch records during the period of October 1, 2003 through March 31, 2004 (Discovery) was held in abeyance pending Express Taxi's production of the same under the terms of Decision No. R04-0849-I.¹ That decision provided that, in the event the Discovery was not produced within ten days of its effective date (*i.e.*, on or before August 2, 2004), RDSM should file a written advisement with the Commission to that effect and the ALJ would proceed to issue a ruling in connection with this portion of the Motion.

3. On August 3, 2004, RDSM filed a pleading entitled "Complainant's Notice to the Commission of a Default on the Part of Respondent Samja's Enterprises" (Notice). The Notice indicates that Express Taxi has failed to comply with Decision No. R04-0849-I. With regard to the Discovery, RDSM states as follows: "[N]o such records have been received, no contact has been made by Respondent to Complainant's attorney or Complainant with reference to the redaction problem and the payment problem for the records. Accordingly, Complainant notifies the Commission of Respondent's default as of August 3, 2004 at the time this notice is being filed."

4. On August 5, 2004, RDSM filed a pleading entitled "First Amendment to Complainant's Notice to the Commission of a Default on the Part of Respondent Samja's Enterprises and Status Regarding Response to Initial Notice of Default" (Second Notice). The Second Notice contains an affidavit from RDSM's counsel pertaining to his telephone conversation with Mr. Elsrode, Express Taxi's President, on August 4, 2004. According to the

¹ Express Taxi had previously been ordered to produce the Discovery on or before July 17, 2004 (ten days after RDSM's counsel and its designated representative filed the required Nondisclosure Agreement) subject to the confidentiality provisions of 4 *Code of Colorado Regulations* 723-16. *See*, Decision No. R04-0735-I. However, Decision No. R04-0849-I granted Express Taxi's motion to modify Decision No. R04-0735-I, in part, so as to allow it to redact confidential information from the Discovery before providing it to RDSM.

affidavit, RDSM's counsel inquired as to whether Express Taxi intended to produce the Discovery and was advised by Mr. Elsrode that Express Taxi did not intend to do so.

5. Discovery in connection with transportation-related proceedings of this type is governed by 4 *Code of Colorado Regulations* (CCR) 723-1-77(c). Subsection (4) of that rule provides as follows: "Motions to Compel Discovery shall not be filed in transportation proceedings. In not less than seven days prior to hearing, any party adversely affected by failure of another party to respond to discovery may file a Motion to Dismiss that party, or in the alternative a Motion *in Limine* to limit evidence presented."

6. Consistent with the above, the Motion requests that "the Respondent be dismissed from participating in this case and an order be entered in favor of the Complainant's Request in its Formal Complaint or in the alternative that the Respondent be limited in presenting any evidence whatsoever where such evidence is correlated to its failure to respond to the discovery requests."

7. The Discovery is relevant or, at the least, is designed to lead to the discovery of admissible evidence in connection with RDSM's claim that Express Taxi failed to maintain the required liability insurance for all vehicles used to provide service under its Certificate No. 55670 as required by § 40-10-110, C.R.S. *See also*, 4 CCR 723-31-12.² Express Taxi has been provided ample opportunity to produce the Discovery. Express Taxi's attempts to resist producing the same have been denied for the reasons discussed more fully in Decision No. R04-

² RDSM asserts in its Formal Complaint that during the time period encompassed by the Discovery, Express Taxi was operating up to 42 vehicles under Certificate No. 55670 but had insurance coverage for only 15 vehicles. Express Taxi has denied that claim in its Answer. RDSM seeks production of Express Taxi's trip sheets and dispatch records to determine which Express Taxi vehicles were operating during this period. It contends that cross-referencing that information with the liability insurance coverage maintained by Express Taxi will allow the Commission to determine whether the vehicles Express Taxi was operating were properly insured.

0735-I. Its confidentiality concerns were initially addressed through the requirement that production would be subject to the Commission's confidentiality rules and that RDSM and its designated representative would be required to execute a Nondisclosure Agreement. *See*, 4 CCR 723-16. Most recently, those concerns were again addressed by allowing Express Taxi to redact from the Discovery those portions it deemed to be confidential.

8. Notwithstanding these accommodations, Express Taxi still apparently refuses to produce the Discovery and, as a result, the ALJ has no choice but to grant the Motion, in part. Therefore, at the hearing of this matter Express Taxi will be precluded from introducing any evidence in support of its claim that it had the liability insurance coverage required by § 40-10-110, C.R.S., and 4 CCR 723-31-12 in force for vehicles operated by it under Certificate No. 55670 between October 1, 2003 and March 31, 2004.

II. ORDER

A. It Is Ordered That:

1. That portion of the Motion for Sanctions filed by RDSM Transportation, Ltd., doing business as Yellow Cab Company, discussed in Section I, Paragraph 2 of this Order is granted.

2. At the hearing of this matter Samja's Enterprises, Inc., doing business as Express Airport Taxi/Express Taxi, will be precluded from introducing any evidence in support of its claim that it had the liability insurance coverage required by § 40-10-110, C.R.S., and 4 *Code of Colorado Regulations* 723-31-12 in force for vehicles operated by it under Certificate No. 55670 between October 1, 2003 and March 31, 2004.

3. This Order shall be effective immediately.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge