

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 14, 2010

Agenda ID #9783

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-258

This draft resolution regarding Appeal of Citation FC-308 by Denis Marcel Beaudoin II, doing business as A Touch of Class Limousine pursuant to Resolution ALJ-187, will be on the agenda at the October 14, 2010 Commission meeting. The Commission may then vote on this draft resolution, or it may postpone a vote.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than October 4, 2010, and reply comments shall be served no later than October 11, 2010. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge Prestidge at tom@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON
Karen V. Clopton, Chief
Administrative Law Judge

KVC:jt2

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-258
Administrative Law Judge Division
October 14, 2010

R E S O L U T I O N

RESOLUTION ALJ-258 Affirming Citation FC 308, Dismissing Charge that Carrier Operated Without Required Liability Insurance, and Reducing Fine for Violations of Public Utilities Code and Commission General Orders

SUMMARY

This resolution resolves the appeal of Denis Marcel Beaudoin II, dba A Touch of Class Limousine, from Citation FC-308 issued by the Commission Consumer Protection and Safety Division. We affirm citation FC-308. Although we find that Beaudoin operated without a permit in violation of Public Utilities Code Section 5379, failed to include all required information on waybills in violation of General Order 157-D, Part 3.01, and failed to maintain evidence of required liability insurance on file with the Commission on the dates charged in the citation, we reduce the fine imposed from \$750 to \$250 based on the unique circumstances of this case. This Resolution shall not be precedent in any other Commission proceeding or citation appeal.

BACKGROUND

On August 19, 2009, the Consumer Protection and Safety Division (CPSD) issued Citation FC-308 to Denis Marcel Beaudoin II, dba A Touch of Class Limousine (Beaudoin), charging him with 15 counts of violation of Public Utilities Code Section 5379 (operating as a charter-party carrier without a valid permit issued by the Commission); 15 counts of failure to include pertinent information on waybills in violation of Commission General Order (GO) 157-D, Part 3.01; and one count of violation of Public Utilities Code Section 5391 and GO 115, (failure to maintain public liability and property damage insurance on file with the Commission). Citation FC-308 imposed a fine of \$750 based on these violations.

Beaudoin then filed a timely notice of appeal pursuant to Resolution ALJ-187. A hearing on the appeal was held on February 11 and 12, 2010 at the Commission hearing room in Los Angeles before Administrative Law Judge (ALJ) Myra J. Prestidge, and subsequently the case was submitted.

FINDINGS OF FACT

1. Beaudoin initially obtained a charter-party permit for himself as a sole proprietorship, dba A Touch of Class Limousine, on April 23, 2003. His permit would normally have expired on April 25, 2006. However, on two occasions, after the permit was suspended due to a lapse in Beaudoin's liability insurance, CPSD reinstated the permit, based on proof that Beaudoin's insurance was back in effect, on dates after the normal expiration date for the permit, October 10, 2006 and July 24, 2007.

2. On July 17, 2007, Robert DeGroot, Senior Transportation Representative (DeGroot), sent Beaudoin a letter, which advised Beaudoin that his permit would expire on December 3, 2007, and urged him to submit a permit renewal application as soon as possible. On October 11, 2007, CPSD License Section also sent a notice to Beaudoin, advising that his permit would expire on December 3, 2007, and that he should apply for permit renewal as soon as possible.

3. On October 30, 2007, Beaudoin submitted an application for renewal (the first application) to the CPSD License Section, along with a check for the \$500 permit renewal fee. The application stated the name of the applicant as Denis Marcel Beaudoin II, dba A Touch of Class Limousine, and specified that the applicant was a corporation. CPSD deposited the check for the \$500 permit renewal fee, and the check cleared the bank on November 15, 2007.

4. Beaudoin received no notice from CPSD that the first application was incomplete until December 21, 2007, approximately three weeks after his original permit expired, and close to two months after the filing of the first application. On December 21, 2007, Ms. Gail Riley of CPSD License Section (Riley) sent a notice to Beaudoin that he needed to submit additional required documentation in order for his application to be processed. On January 22, 2008 and February 21, 2008, Riley sent identical notices to Beaudoin.

5. By the end of February 2008, Beaudoin had submitted all of the required documentation to the CPSD License Section, except for his drug test results, which were required to be sent directly by his drug testing company. Although the CPSD License Section did not receive Beaudoin's drug test results, in February 2008, Mrs. Samantha Beaudoin (Beaudoin's wife) made a written request that the drug testing company send the results to the CPSD License Section. Beaudoin and his wife claim that they had also made several previous requests that the drug testing company send the test results to the CPSD License Section.

6. Since Riley had questions about Beaudoin's first application, she brought it to the attention of Mr. Wilson E. Lewis, Supervisor, CPSD License Section (Lewis). Lewis reviewed the first application and became concerned about whether Beaudoin was applying for a permit for himself, as a sole proprietorship, or on behalf of a California corporation, Innovative Transportation Solutions (Innovative), formed by Beaudoin and his wife.

7. On April 23, 2008, Lewis sent Beaudoin a letter entitled "Notice of Impending Denial," stating that, based on certain discrepancies in the first application, it was unclear whether Beaudoin was applying for a permit as an individual or as a corporation. Lewis' letter advised that if Beaudoin intended to operate as a corporation, he must submit an additional complete application packet for the corporation, provide evidence of required liability insurance for the corporation, and obtain workers' compensation insurance if he had employees. Lewis enclosed an application packet in this letter and stated that if Beaudoin were to send the new application to Lewis' attention, Lewis would apply the \$500 fee that Beaudoin had paid for the first application to the second application. The letter warned that if Beaudoin did not provide a satisfactory response by May 16, 2008, Lewis would consider denying the first application.

8. Beaudoin subsequently filed a second application, on behalf of his corporation, Innovative, with the CPSD License Section. Although Beaudoin and his wife dated the application as signed on March 10, 2008, CPSD did not receive the second application until June 12, 2008. Based on Lewis' statement in the April 23, 2008 letter, Beaudoin did not include an additional \$500 application fee with the second application.

9. On June 13, 2008, DeGroot sent a letter to "Innovative, Attention: Beaudoin," stating that the CPSD License Section could not process the second application because Beaudoin had not submitted the required \$500 application fee with the application.

10. Since Beaudoin did not pay an additional \$500 application fee for the second application, the CPSD License Section never processed the second application and did not determine whether it was complete. CPSD contends that since Beaudoin apparently sent the application to the CPSD License Section generally, rather than directly to Lewis' attention as directed in the April 23, 2008 letter, the CPSD License Section had no obligation to apply the first \$500 application fee that Beaudoin paid for the first application to the second application or to process the second application.

11. On July 22, 2008, the CPSD License Section sent Beaudoin a notice denying his first application, solely on the grounds that Beaudoin failed to respond to Lewis' April 23, 2008 letter.

12. The CPSD License Section sent the above notice of denial over a month after Beaudoin had submitted the second application on behalf of his corporation, as directed in Lewis' April 23, 2008 letter. Although Beaudoin did not submit the second

application by May 16, 2008, Lewis' April 23, 2008 letter did not establish May 16, 2008 as a firm deadline for submitting a new application if Beaudoin wished to operate as a corporation, but stated that Lewis would consider denial of the application if Beaudoin did not make a satisfactory response by that date.

13. As testified by Lewis at the appeal hearing, Lewis did not know that Beaudoin had filed the second application at the time that CPSD License Section denied Beaudoin's first application, because CPSD License Section employees did not bring the application to his attention, and he does not recall receiving the second application addressed to his attention. Lewis would not have denied the first application if he had known that Beaudoin had filed the second application. Further, if Lewis had learned of the filing of the second application within a reasonable time after the denial, he would have considered reversing the denial of the first application.

14. In addition, Lewis testified that if he had known about the filing of the second application, the CPSD License Section would have processed the second application without requiring Beaudoin to pay an additional \$500 application fee.

15. On November 13, 2008, Beaudoin faxed a note to DeGroot, stating that his company had been trying to get in touch with Lewis regarding his permit application for the past six months, had made 47 phone calls and sent one fax in its attempts to do so, and that Lewis had not returned Beaudoin's calls. Beaudoin attached phone records documenting that he made the phone calls and sent a fax in his efforts to reach Lewis between February 2008 and August 26, 2008. Beaudoin's note also stated that he did not understand the reason for the denial of his application, because he had previously paid a \$500 application fee.

16. Forty-four of the calls documented in Beaudoin's phone records faxed to DeGroot were made directly to Lewis' line during business hours, between 9 a.m. and 5 p.m. Some of the calls were made by Beaudoin, and some of the calls were made by Beaudoin's wife. Forty-three of the calls lasted two minutes or less. Thirty-five of the 43 calls were made in rapid succession, with less than one minute between them, so that there may not have been time to leave a voicemail message. During the remaining eight calls, which were longer, there may have been sufficient time to leave a voicemail message for Lewis. The phone records show that a six minute conversation between Beaudoin and Lewis occurred on May 1, 2008.

17. At the appeal hearing, Beaudoin's wife testified that she made some of the calls in rapid succession, based on the advice of CPSD License Section staff that since Lewis is often in the office but away from his desk, she should keep calling until she reached him. Both Lewis and Ms. Moira Simmerson, Supervisor, Transportation Enforcement Branch, CPSD (Simmerson) confirmed in their testimony that Lewis is frequently either on the phone or away from his desk when he is in the office, because his job as a supervisor requires him to confer with other CPSD License Section staff. Lewis often receives phone calls that leave no message. Simmerson further testified that it is not only

possible but likely that a person could call Lewis' phone extension 40 times during business hours and not be able to reach him directly.

18. Lewis testified that he does not recall speaking with Beaudoin after a six-minute phone conversation that occurred on May 1, 2008 or receiving voicemail messages from Beaudoin. Lewis stated that he would have returned the calls if messages were received. Beaudoin and his wife testified that they left voicemail messages for Lewis, but never received a return call.

19. At the appeal hearing, Beaudoin introduced additional phone records into the record, which show that Beaudoin and his wife made a total of 77 calls combined to Lewis; the CPSD License Section toll-free phone number; DeGroot; Mr. Mark Clairmont (Clairmont), an employee of the CPSD License Section; and Mr. Paul Wuerstle, Manager, Transportation Enforcement Branch, CPSD (Wuerstle) between April 16, 2008 and November 17, 2008 regarding their permit applications.

20. In addition to many shorter calls, the above 77 phone calls included nine longer phone calls placed by Beaudoin and his wife, as follows:

- Seven phone calls to the CPSD License Division toll-free number which occurred on April 18, 2008 for 25 minutes; May 6, 2008 for 6 minutes; July 17, 2008 for 12 minutes, August 25, 2008 for 6.7 minutes; August 26, 2008 for 3.9 minutes; November 10, 2008 for 10 minutes; and November 12, 2008 for 11 minutes;
- A six-minute call to Lewis' phone extension on May 1, 2008; and
- Two calls to DeGroot's phone extension, specifically, a 9-minute phone call on November 10, 2008 and a 22-minute phone call on November 12, 2008.

21. On November 26, 2008, Beaudoin sent a letter to Wuerstle, which also enclosed phone records from Beaudoin's company showing that Beaudoin had attempted to contact Lewis 47 times in the past six months. Beaudoin's letter stated that he had received no return call from Lewis, and that Beaudoin did not understand the reason for denial of the permit, because he had previously submitted all required documents with a check for the \$500 application fee.

22. On December 17, 2008, Wuerstle sent a letter to Beaudoin stating that it was not unreasonable for Lewis to have denied Beaudoin's application, because Lewis' April 23, 2008 letter had warned that if Beaudoin did not submit a satisfactory response by May 16, 2008, Lewis would consider denying the application. The letter further stated that although the phone records show that Beaudoin dialed Lewis' phone extension 47 times, the records do not establish that Beaudoin ever left a message for Lewis. Wuerstle's letter did not acknowledge the filing of Beaudoin's second application.

23. On March 8, 2009, Beaudoin filed a third permit application, for himself as a sole proprietor, dba A Touch of Class Limousine. Beaudoin included a check for an additional \$500 application fee with the third application.

24. On May 5, 2009, the CPSD License Section granted the third application and issued Beaudoin a permit, which will expire on May 5, 2012.

25. Beaudoin had no permit in effect from December 3, 2007 until May 5, 2009.

26. Based on the evidence presented by CPSD, we find that Beaudoin operated as a carrier without a permit, in violation of Public Utilities Code Section 5379, and did not include all of the information required by GO 157-D, Part 3.01 in the driver trip ticket section of his waybills on 15 occasions on the dates charged in Citation FC-308. Beaudoin also failed to provide documentation of required liability insurance coverage on file with the Commission on the dates charged in the citation in violation of GO 115-F (9), but later provided evidence that he had the required insurance coverage in effect during this period.

27. The permitting process for carriers enables the CPSD License Section to protect the public by ensuring that carriers transporting passengers have valid drivers' licenses, have adequate liability insurance for their vehicles, have submitted negative drug test results for their drivers, and meet other requirements specified by law.

28. At the appeal hearing, Beaudoin admitted on the record that he had no permit in effect in September 2008.

29. Based on the numerous notices and letters from the CPSD License Section, Beaudoin knew or should have known that he did not have a permit in effect on the dates of the violations charged in Citation FC-308.

30. Although the manner in which the CPSD License Section handled Beaudoin's first and second applications may have been frustrating or confusing to Beaudoin, he was not justified in operating as a carrier without a permit.

31. The circumstances of this case, and the manner in which the CPSD License Section handled Beaudoin's first and second applications, warrant a reduction in the fine imposed by Citation FC-308 from \$750 to \$250, as follows:

- Although under GO 157-D, Part 3.05, Beaudoin was responsible for applying for renewal of his permit at least three months before his permit would expire, CPSD had reinstated his permit on July 24, 2007, long after the normal expiration date for the permit, and did not send out the computer-generated renewal notice and renewal packet to Beaudoin four months before his permit would expire. Therefore, the date on which Beaudoin's permit would expire was unclear, until DeGroot notified Beaudoin in July 2007 that his permit would expire on December 3, 2007.

- Beaudoin submitted his first application on October 30, 2007, over a month before his original permit would expire. If, in view of the upcoming expiration of his permit, the CPSD License Section had been able to expedite his application and had given Beaudoin notice that his application was incomplete sooner, Beaudoin would have had an opportunity to provide the additional required documents and to complete his application before the expiration of his permit on December 3, 2007.
- Although Beaudoin followed the instructions in Lewis' April 23, 2008 letter by filing a second application on behalf of his corporation, Innovative, in June 2008, an apparent lapse in communications between Lewis and CPSD License Section employees resulted in the decision of the CPSD License Staff not to process Beaudoin's second application because he did not pay an additional \$500 application fee and in the denial of Beaudoin's first application, which would not have occurred if Lewis had known about the filing of the second application.
- Although CPSD makes much of the fact that Beaudoin allegedly sent the second application to the CPSD License Section office, rather than directly to Lewis' attention, it is reasonable to expect that Lewis would have made CPSD License Section employees aware of the contents of the April 23, 2008 letter, that CPSD License Section employees would have informed Lewis of the filing of the second application, that Beaudoin would not be required to pay an additional \$500 application fee for the second application, as stated in Lewis' April 23, 2008 letter, and that the CPSD License Section would have processed Beaudoin's second application;
- By placing 77 phone calls, Beaudoin and his wife made exhaustive efforts to reach Lewis and other CPSD License Section staff by phone in order to discuss the first and second applications and to resolve any problems that would have interfered with their obtaining a permit for Beaudoin's company. Although CPSD makes much of the fact that 18 of the 77 calls were made to the toll-free phone number for the CPSD License Section, rather than to Lewis' phone extension, it was reasonable for Beaudoin and his wife to contact the CPSD License Section staff if they were having difficulty reaching Lewis by phone.
- Beaudoin filed three applications and paid two \$500 application fees in order to obtain renewal of his permit in May 2009.

- Since Beaudoin's wife was already cited by the Los Angeles Police Department for operating as a carrier without a permit at the Los Angeles World Airport on November 9, 2009, it is appropriate to exclude the November 9, 2009 trip when considering the amount of the fine to be imposed pursuant to Citation FC-308.

COMMENTS

Public Utilities Code Section 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment to the two parties, Beaudoin and CPSD on September 14, 2010. The following comments were received on _____ by _____.

CONCLUSIONS OF LAW

1. Under Public Utilities Code Section 5379, it is unlawful for a charter party carrier of passengers (carriers) to operate without a valid permit or certificate issued by the Commission.
2. Under GO-157-D, Part 3.01, licensed carriers are responsible for filing renewal applications for their permits at least three months before the expiration date of the permit.
3. GO 157-D, Part 3.01, requires that the driver of a vehicle operated by a carrier must possess a waybill for each trip that includes certain information, including: a) The name of the carrier and the TCP number, b) the vehicle license plate number for the carrier's vehicle, c) the driver's name, d) the name and address of the person requesting or arranging the charter, e) the time and date when the charter was arranged, f) whether the transportation was arranged by telephone or written contract, g) the number of persons in the charter group, h) the name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation, and i) points of origination and destination for the trip.
4. Public Utilities Code Section 5391 and GO 115-F require carriers to maintain coverage by insurance covering liability for personal injury, including death, and property damage or destruction at all times during the life of the Commission permit or certificate held by the carrier. GO 115-F (9) requires carriers to maintain proof of this insurance coverage on file with the Commission at all times when operating as a carrier.
5. Since Beaudoin's original permit, granted by CPSD in 2003, provided that he could only operate vehicles with a seating capacity of less than 15 passengers, he was required to acquire and maintain at all times during the life of the permit liability insurance

covering personal injury, including death, and property damage or destruction in the amount of \$1,500,000.

6. Beaudoin violated Public Utilities Code Section 5379 by operating as a carrier without a permit on the dates charged in Citation FC-308.

7. Beaudoin violated GO 156, Part 3.01 because: a) the driver trip ticket section of the waybills for trips conducted on the dates charged in Citation FC-308 did not include the vehicle license plate number and the TCP number, as required by GO 157-D, Part 3.01, and b) the driver trip ticket section of the waybills for trips conducted on September 14, October 9 and 10, and November 8, 2008 did not include the complete name of the person requesting or arranging the charter, as required by GO 157-D, Part 3.01.

8. Beaudoin violated GO 115-F (9) because although he had the required liability insurance in effect for his company during the period from April 22, 2008 to February 10, 2009, he failed to maintain proof of this insurance coverage on file with the Commission.

THEREFORE, IT IS ORDERED that:

1. Citation FC-308 is affirmed.
2. Based on the circumstances of this case, the fine for Citation FC-308 is reduced from \$750 to \$250.
3. Denis Marcel Beaudoin II shall pay a fine of \$250 in full within 30 days of the effective date of this resolution or shall begin to make payments within 30 days based on an approved written payment plan with the Consumer Protection and Safety Division. All checks shall be made payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment, the fine shall be deposited in the State Treasury to the credit of the General Fund.
4. If Denis Marcel Beaudoin II fails to pay the fine as provided herein, the Consumer Protection and Safety Division shall take any and all action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.
5. Denis Marcel Beaudoin II shall comply with all legal and Commission requirements applicable to his operations as a third-party charter carrier and shall maintain evidence of required liability insurance coverage on file with the Consumer Protection and Safety Division License Section at all times during which his company is operating as a third-party charter carrier.
6. The appeal process for Citation FC-308 is closed.

7. This Resolution shall not be precedent in any other citation appeal or Commission proceeding.

8. This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on October 14, 2010, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ-258 to the electronic mail addresses on the attached service list, as well as a Notice of Availability by U.S. mail. I have served a hard copy of the foregoing Draft Resolution ALJ-258 by U.S. mail on those persons on the attached service lists that do not have e-mail addresses.

Dated _____, at San Francisco, California.

Joyce Tom

CPSD Citation Number FC-308
Service List
Resolution ALJ-258

Denis Marcel Beaudoin II,
dba A Touch of Class Limousine
7205 Kenyon Avenue
Hesperia, CA 92345

Cathy Denise Beaudoin, Esq.
c/o Zoco Productions Inc.
204 W. 11th St., Apt 4B
New York, New York 10026
cdbeaudoin@gmail.com

Moira H. Simmerson, Supervisor
Transportation Enforcement Branch
Consumer Protection & Safety Division
California Public Utilities Commission
505 Van Ness Avenue, 2nd Floor
San Francisco, CA 94102
Email: mhs@cpuc.ca.gov

Linda Barrera, Esq.
California Public Utilities Commission
Legal Division
505 Van Ness Avenue
San Francisco CA 94102
Email: lb3@cpuc.ca.gov

Myra J. Prestidge
Administrative Law Judge
California Public Utilities Commission
505 Van Ness Avenue, Room 5041-B
San Francisco, CA 94102
E-mail: tom@cpuc.ca.gov
(Assigned Administrative Law Judge)

Lynn Stanghellini
California Public Utilities Commission
Chief Court Reporter
505 Van Ness Avenue, Room 2106
San Francisco, CA 94102
Email: las@cpuc.ca.gov