

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-285
Administrative Law Judge Division
November 8, 2012

RESOLUTION

RESOLUTION ALJ-285. The appeal of Citation No. FC-509 (amended) is closed. The citation is final. (Re: Citation No. FC-509 (amended) issued to Dominic Orlando Cabrera dba American Passenger Services for violations of Pub. Util. Code §§ 5371 and 5387.)

SUMMARY

The appeal filed by Dominic Orlando Cabrera of Citation No. FC-509 (amended) is closed. The citation is final. If he has not already done so, Dominic Orlando Cabrera shall, within 30 days of the date this resolution is issued, pay a fine of \$1,500.00, or begin to make payments based on a written payment plan approved in writing by the Director of the Consumer Protection and Safety Division.

BACKGROUND

The Commission's Consumer Protection and Safety Division (CPSD) is authorized to issue citations to charterparty and other carriers for violations of the Public Utilities Code or Commission Orders. To make the citation program more comprehensive and the process more efficient, in 2005 the Commission adopted new procedures governing the appeal of those citations. (Resolution ALJ-187, September 22, 2005.)

On March 20, 2012 (pursuant to Resolution ALJ-187), CPSD cited Dominic Orlando Cabrera (respondent), doing business as (dba) American Passenger Services (APS), for violating the Public Utilities Code. Specifically, CPSD cited respondent on 62 counts of operating as a charter-party carrier prior to the issuance of authority, during the period July 1, 2011 through October 31, 2011, in violation of Pub. Util. Code §§ 5371 and 5387.¹ The 62 counts were separate days identified on invoices sent by APS to Citi Concepts

¹ The original citation was amended to correct the review period. (Reporter's Transcript at 6.) The correct review period is July 1, 2011 through October 31, 2011.

(dba Baron Tours) for services rendered using an APS minibus. CPSD ordered respondent to answer the citation on or before April 18, 2012 by either (a) paying a fine of \$1,500 or (b) filing an appeal to contest the fine. The citation stated that failure to do so would place respondent in default of the citation and respondent would forfeit any right to appeal.

Respondent requested, and CPSD granted, an extension to file the answer. On May 18, 2012, respondent filed an appeal. Respondent appeals on the grounds that from July 1, 2011 through October 31, 2011, he was neither in violation of Pub. Util. Code §§ 5371 and 5387, nor was he in contract with Citi Concepts.

Notice of hearing was issued on June 7, 2012. Hearing was held on June 22, 2012. Notice of further hearing was issued on June 28, 2012, for a hearing to be held on September 4, 2012.

Four conference calls were held in August 2012 (on August 6, 22, 28, 29). The calls included respondent's attorney, CPSD and the Administrative Law Judge. The conference calls were held for several purposes including, but not limited to: (a) determining how best to consider and receive evidence (given respondent was out of the country attending to family matters, and it would potentially be a hardship for respondent to appear before the Commission), (b) considering alternative ways to facilitate discovery (e.g., a non-evidentiary conference call including respondent [from out of the country], respondent's attorney, CPSD and the Judge), and (c) discussing possible introduction of rebuttal evidence by CPSD.

The final conference call was held on August 29, 2012. Without objection, Exhibits 1 and 2 (identified at the June 22, 2012 hearing; *see* Reporter's Transcripts at 5 and 7) were received as evidence. Exhibit 3 (identified at the June 22, 2012 hearing; *see* Reporter's Transcript at 25) was not moved into evidence. Respondent (through his attorney) agreed to some of the violations, agreed to pay the \$1,500.00 fine, and agreed that no further hearing was needed. The Judge directed that respondent submit a letter by September 13, 2012 to memorialize respondent's position in writing. By letter dated September 12, 2012, respondent agrees to pay the \$1,500 fine.

DISCUSSION

Respondent agrees to pay the \$1,500 fine. Respondent does not seek further hearing, does not seek leave to file further pleadings, and does not seek further appeal.

The appeal should be closed, and the citation should be made final. If he has not already done so, respondent should without further delay pay the fine in full, or begin to make payments based on a written payment plan approved by the Director of CPSD.

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. On October 9, 2012, a draft of today's resolution was distributed for comment to the two parties. Comments were due by October 29, 2012. No comments were filed.

FINDINGS

1. On March 20, 2012, CPSD cited respondent dba APS on 62 counts of operating as a charter-party carrier without authority during the period July 1, 2011 through October 31, 2011 in violation of Pub. Util. Code §§ 5371 and 5387.
2. CPSD ordered respondent to answer the citation on or before April 18, 2012 by either (a) paying a fine of \$1,500 or (b) filing an appeal.
3. With the granting by CPSD of an extension to the filing date, respondent filed a timely appeal on May 18, 2012.
4. Hearing on the appeal was held June 22, 2012, and a further hearing set for September 4, 2012.
5. In a conference call on August 29, 2012, respondent (through counsel) agreed to some of the violations, agreed to pay the \$1,500 fine, and agreed that no further hearing was needed.
6. By letter dated September 12, 2012, respondent agrees to pay the \$1,500 fine, does not seek any further hearing, does not seek leave to file any further pleadings, and does not seek any further appeal of the citation.

CONCLUSIONS OF LAW

1. Citation FC-509 (amended) should be made final and respondent dba APS should pay the \$1,500 fine.
2. The appeal should be closed.
3. If he has not already done so, respondent dba APS should, within 30 days of the date this resolution is issued, pay the fine of \$1,500, or begin to make payments based on a written payment plan approved in writing by the Director of CPSD. All

checks should 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 should be deposited in the State Treasury to the credit of the General Fund.

4. If respondent fails to pay the fine as provided herein, CPSD should take any and all action provided by law to recover the unpaid fine and ensure compliance with all applicable statutes and Commission orders.
5. This order should be effective today to remove any uncertainty regarding the citation and the appeal.

THEREFORE, IT IS ORDERED that:

1. Citation No. FC-509 (amended) is final. Unless he has already done so, Dominic Orlando Cabrera doing business as American Passenger Services shall, within 30 days of the date this resolution is issued, either (a) pay the fine of \$1,500.00, or (b) begin to make payments based on a written payment plan approved in writing by the Director of 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. If Dominic Orlando Cabrera doing business as American Passenger Services 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 all applicable statutes and Commission orders.

2. The appeal of Citation No. FC-509 (amended) is closed.

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 _____, the following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director

INFORMATION REGARDING SERVICE

I have provided notification of the foregoing Draft Resolution ALJ-285 to the electronic mail addresses on the attached service lists, as well as a Notice of Availability by U.S. mail. I have served a hard copy of the foregoing Draft Resolution ALJ-285 by U.S. mail on those persons on the attached service lists that do not have e-mail addresses.

Dated October 9, 2012, at San Francisco, California.

/s/ SHONTA BRYANT-
FLOYD

Shonta Bryant-Floyd

SERVICE LIST

CITATION APPEAL (CPSD) NUMBER FC-509

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