PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-326
Administrative Law Judge Division

R E S O L U T I O N

RESOLUTION ALJ-326. Resolves the Appeal of Citation No. SED FC-718 of Joseph Elias dba Showtime Transportation (PSG-3894).

SUMMARY

This resolution affirms Citation No. SED FC-718 issued to Joseph Elias dba Showtime Transportation on May 5, 2015, by the California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED). SED initially issued Citation No SED FC-718 in the amount of $4,000 for 8 violations (22 counts) of the Commission's General Order (GO) 115-F and GO 157-D, and Public Utilities Code Section 5351, *et seq.*, for the period January 1, 2014 to December 31, 2014. SED corrected Citation No SED FC-718 to remove 1 violation (1 count) at the hearing resulting in a reduced fine of $3,500.

Proceeding K.15-06-010 is closed.

BACKGROUND

The Commission regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, *et seq.*) Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, SED[1] is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-299.[2]

[1] ALJ-187 confers authority on the Consumer Protection and Safety Division, now known as the Safety and Enforcement Division.
[2] The Commission issued Resolution ALJ-299 on June 26, 2014 for application beginning on January 1, 2015.

On May 5, 2015, SED issued Citation FC-718 for Violations of Public Utilities Code and Commission General Orders (GO) to Joseph Elias dba Showtime Transportation (Elias) for violations occurring during the period January 1, 2014 to December 31, 2014 as follows:[3]

1. Elias operated during suspension, in violation of Pub. Util. Code § 5379 (3 counts);
2. Elias operated without public liability and property damage (PL&PD) insurance in effect and on file, in violation of Pub. Util. Code §§ 5387(c)(1)(D), 5391 and GO 115-F (1 count.);
3. Elias operated without adequate public liability and property damage (PL&PD) in effect and on file, in violation of Pub. Util. Code § 5391 and GO 115-F (8 counts);
4. Elias failed to have Workers' Compensation (WKCP) insurance in effect and on file with the Commission, in violation of Pub. Util. Code. § 5378.1 (1 count);
5. Elias failed to maintain an active account in a Controlled Substance and Alcohol Testing Certification Program, in violation of Pub. Util. Code § 5374(a)(1)(I), and GO 157-D, Part 10 (2 counts);
6. Elias failed to fully complete waybills in violation of Pub. Util. Code § 5381.5 and GO 157-D, Part 3.01 (2 counts); and
7. Elias failed to provide access to business records, vehicles, land and buildings, in violation of Pub. Util. Code § 5389 and GO 157-D Part 6.02 (5 counts).

APPEAL

Elias filed a timely appeal of Citation FC-718. In the appeal, Elias pled no contest to Violation 5 (failure to maintain an active account in a Controlled Substance and Alcohol Testing Certification Program, in violation of Pub. Util. Code § 5374(a)(1)(I), and GO 157-D, Part 10 (2 counts). He appeared to plead no contest to several other counts, but his appeal does not link his defenses to each particular violation. Therefore, we address his appeal and explanations to the best of our understanding.

The Commission granted the request for an appeal hearing on all remaining violations. The assigned Administrative Law Judge (ALJ) set hearing for February 26, 2016; however, Elias was unable to be present and communicated such to the assigned ALJ

[3] Citation FC-718 initially contained an eighth violation (underreporting gross operating revenue and underpaid Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees for 2014, in violation of Pub. Util. Code §§ 5378(a)(9) and 54511 (1 count); however at the February 26, 2016 hearing, SED requested to remove the violation from consideration. The assigned ALJ granted the request, thus reducing the proposed fine from $4,000 to $3,500. (Hr. Tr. February 26, 2016 at 8-9).

prior to the hearing date. The assigned ALJ proceeded with the hearing, identified Elias' appeal for the record, and provided that Elias could submit supplementary exhibits by March 4, 2016, with an opportunity for SED to respond on March 11, 2016, at which point the case stood submitted.

At hearing, the assigned ALJ identified the following SED exhibits:

SED 1: Compliance Filing (Citation and Attachments) Public Version
SED 2: Compliance Filing (Citation and Attachments) Confidential Version
SED 3: Fine Computation

In response to evidence submitted by Elias, on March 11, 2016, SED proffered the following exhibits, which are identified as of that date:

SED 4: Showtime Ads & Waybills Showing 20 Pass Bus
SED 5: Declaration of Greg Collentine

Elias' appeal (marked as SHOWTIME 1) and supplementary exhibits are as follows:

SHOWTIME 1: Appeal of Joseph Elias[4]
SHOWTIME 2: Driver/Vehicle Examination Report
SHOWTIME 3: Copy of Insurance
SHOWTIME 4: Safety Compliance Report/Terminal Record Update
SHOWTIME 5: Additional Information

All exhibits were received into the record on August 2, 2016.

[4] The assigned ALJ identified Elias' appeal as Exhibit (Exh.) SHOWTIME 1 at the hearing on February 26, 2016. Elias filed supplementary exhibits on March 4, 2016. The assigned ALJ identified Elias' supplementary exhibits for the record on that same day.

MOTIONS

Although SED made no formal motion to file Exh. SED 2 under seal at hearing, such motion is implied and is granted as set forth below. On March 21, 2016 SED moved to file under seal *The Response of the Safety and Enforcement Division to the Inspection Reports of Showtime Transportation* (Response). The attachments to the response, identified above as Exh. SED 4 and Exh. SED 5, contain sensitive customer information.

With respect to the confidential material under seal, the Commission has granted similar requests for confidential treatment in the past and does so again herein. We agree the information involves personal sensitive information. We therefore authorize the confidential treatment of Exh. SED 2 and Exh. SED 4 as set forth in the ordering paragraphs of this resolution. SED's Response itself and Exh. SED 5 are not granted confidential treatment since no sensitive information is contained therein.

BURDEN OF PROOF

Resolution ALJ-299 states that staff has the burden to prove a prima facie case supporting its issuance of the citation for the alleged violation. The burden then shifts to appellant to demonstrate that a violation did not occur and the citation should not issue or that the amount of the penalty is inappropriate. Each party must meet its burden by a preponderance of the evidence (Administrative Law, 3 Cal. Jur.3rd of § 558, citing to Southern California Jockey Club v. California Horse Raising Board (1950) 36 Cal.2d 167.)

In reviewing the record of this citation appeal, we find that SED has met its burden of proof by making a prima facie case that Elias violated Pub. Util. Code §§ 5374(a)(1)(I), 5379, 5381.5, 5387(c)(1)(D), 5378.1, 5389, 5391, GO 157-D, Paras 3.01, 6.02, and GO 115-F. We now consider whether Elias met its burden of providing that the violations did not occur and the citations should not issue.

RESOULUTION OF THE APPEAL

Violation of Pub. Util. Code § 5379 (Violation 1, 3 counts)

Pub. Util. Code § 5379 provides in relevant part that "after the cancellation or revocation of a permit or certificate, it is unlawful for a charter-party carrier of passengers to conduct any operations as a carrier."

It is unclear from the appeal if Elias has met its burden by either providing a defense or an explanation for this violation. Nevertheless, SED provides sufficient evidence showing that Elias operated Showtime Transportation as a charter-party carrier on three separate occasions (May 3, 2014, May 10, 2014 and August 23, 2014) while its

operating authority was suspended. The Commission upholds this violation and imposes SED's recommended fine of $750.

Violation of Pub. Util. Code §§ 5387(c)(1)(D), 5391 and GO 115-F (Violation 2, 1 count.)

Pub. Util. Code §§ 5387(c)(1)(D) governs the authority of the Commission to revoke an operating license for failure to maintain liability insurance and for operation during a period of suspension. On July 28, 2014, the Commission issued Elias an "Order of Suspension." During the period of July 28, 2014 through August 24, 2015, SED found that Elias did not possess liability insurance as required by § 5391.

On August 24, 2014, Elias' vehicle, SHWTME 2, was detained and cited by the Modesto Police Department and impounded by the California Highway Patrol for operating without authority and without liability insurance coverage.

In his appeal, Elias states that the vehicles he used were in the shop and were not in operation. Although Elias does not point directly to Violation 2 in his appeal, it is assumed that his defense pertains to this violation. In that case, Elias' defense appears to be in direct contradiction to the August 23, 2014 ~~Modest~~Modesto Police Department citation and subsequent impoundment.

As discussed later in this decision, Elias provides often contradictory and what appears to be misleading responses in his appeal. This behavior is unacceptable and could result in sanctions, including possible permanent revocation of Showtime Transportation's operating license if the Commission were to find that Elias violated Rule 1 of the Commission's Rules of Practice and Procedure.[5]

We find that Elias operated during a suspension and without adequate insurance in violation of Pub. Util. Code §§ 5387(c)(1)(D), 5391 and GO 115-F and confirm SED's recommended fine of $500.00.

Violation of Pub. Util. Code § 5391 and GO 115-F (Violation 3, 8 counts)

Pub. Util. Code § 5391 provides that all charter-party carriers granted permits or certificates of operation shall procure and continue to maintain in effect adequate public liability and property damage insurance. GO 115-F sets forth adequate insurance to be $1.5 million for any vehicle with seating capacity between 8-15 passengers and $5 million for any vehicle with seating capacity of 16 or greater.

[5] Rule 1.1 states, in part, that any person who signs a pleading or brief, enters an appearance, transacts business with the Commission, or offers testimony, shall "never…mislead the Commission or its staff by an artifice or false statement of fact or law."

In Citation FC-718, SED states that Elias operates two vehicles, the first being a 15-passagener bus and the second, identified as SHWTME 2, with a capacity for 20 persons (Exh. SED 1 at 10). SED asserts that Elias failed to procure sufficient insurance for SHWTME 2, retaining a policy for $1.5 million rather than the $5 million required by GO 115-F.

Elias offers as a defense that he does not operate any vehicle at above a 15 passenger capacity, but offers conflicting explanations and evidence. In his appeal, Elias states "I do not operate a 20 passenger vehicle; this was a clerical error because I put what the capacity is and not what I operate. I only operate 15 passengers or less."[6] Elias continues that he no longer owns the bus that the SED investigator listed, presumably referring to SHWTME 2. In support of this assertion, Elias provides a California Highway Patrol Driver/Vehicle Examination Report (Exh. SHOWTIME 2), a Safety Compliance report/Terminal Record Update (Exh. SHOWTIME 3) and a copy of liability insurance (Exh. SHOWTIME 4), all of which state the presence of a 15-passanger capacity vehicle.

In its March 11, 2016 response, SED asserts that the evidence provided by Elias is unreliable because "California Highway Patrol has been known to accept the carrier's statement regarding the capacity of their vehicles, rather than actually counting the number of seats in each bus." SED continues "Mr. Elias's insurance application should also be disregarded because he misrepresented the capacity of his vehicle when he applied for insurance in order to obtain a lower premium."[7]

SED further argues that Elias admitted ownership of 20-passenger vehicle in his appeal when he stated that he "put what the capacity is, and not what I operate…"[8] rather than the capacity of the vehicle itself. SED also includes in Exh. SED 4 examples of waybills that appear to cross out the 20-passenger capacity along with evidence that Elias operates at above a 15-passenger capacity, including a request for service made by an SED investigator to Mr. Elias for greater than 15 passenger capacity that was granted.

The defense proffered by Mr. Elias is confusing and borders on duplicitous. The Commission accepts SED's explanation that the documents provided by Elias fail to sufficiently show the absence of a 20-passenger vehicle. Furthermore, Elias appears to admit ownership of such a vehicle when he states "I put what the capacity is, and not what I operate." Evidence provided by SED suggests that even this statement is false given that Elias agreed to operate at above a 15-passenger capacity to one of SED's investigators.

[6] Exh. SHOWTIME 1 is the Notice of Appeal.
[7] March 11, 2016 Response of the Safety and Enforcement Division to the Inspection Reports of Showtime Transportation at 1.
[8] *Id* at 2.

Pub. Util. Code § 5391 and GO 115-F are clear in that the insurance requirements are based upon the capacity of the vehicle itself and not that capacity at which an owner operates. The Commission finds that Elias has operated a vehicle with a capacity greater than 15 without sufficient insurance and upholds this violation and SED's recommended fine of $500. If Elias continues ownership of a 15+ passenger vehicle, he must immediately procure sufficient insurance in the amount of $5 million pursuant to GO 115-F. In the event that Elias engages again in what appears to be deliberate misleading of this Commission, we may consider imposing penalties, including possible revocation of Elias' operational certificate.

Violation of Pub. Util. Code § 5378.1 (Violation 4, 1 count)

Pub. Util. Code § 5378.1 governs the procurement of Worker's Compensation coverage, if relevant, or the filing of a statement under penalty of perjury that in its operations as a charter-party carrier, the owner does not employ any person in any manner so as to become subject to the workers' compensation laws of California.

In its investigation, SED found that Elias operated both Showtime buses concurrently on multiple occasions, thus pointing to multiple vehicle operators, which appears to negate the June 11, 2012 sworn Workers' Compensation Declaration Form (TL:-706-K) declaring that he has no employees.

In his appeal, Elias states that on the dates listed for this violation by SED, he has sub-contracted the work out to another company. However, he pleads guilty to not having workers compensation insurance for his driver on August 23, 2014, the date vehicle SHWTME 2 was detained and cited by the Modesto Policy Department and impounded by the California Highway Patrol.

The Commission agrees that Elias has violated Pub. Util. Code § 5378.1 on at least one occasion, August 23, 2014. Elias has failed to provide compelling evidence that the work listed on the other dates (April 5, 2016, May 17, 2016, December 6, 2016 and December 7, 2016) was indeed subcontracted out to another company. The Commission upholds this violation and the recommended fine in the amount of $500.

Violation of Pub. Util. Code § 5374(a)(1)(I), and GO 157-D, Part 10 (Violation 5, 2 counts)

Pub. Util. Code § 5374(a)(1)(I), and GO 157-D, Part 10, govern the necessary requirements preceding issuance of a permit or certificate to charter-party carriers. Relevant here is the requirement to maintain an active account in a Controlled Substance and Alcohol Certification Program. SED, in its investigation, found that Elias violated these provisions by failing to enroll in an approved program during the time period July 2, 2013-March 12, 2015.

In his appeal, Elias agreed with SED's citation and pled no contest to the violation. Therefore, we uphold SED's finding that Elias violated Pub. Util. Code § 5374(a)(1)(I), and GO 157-D, Part 10 and confirm SED's recommended fine in the amount of $500.

Violation of Pub. Util. Code § 5381.5 and GO 157-D, Part 3 (Violation 6, 1 count)

Pub. Util. Code § 5381.5 and GO 157-D, Part 3 govern the inclusion of required information and handling of charter-party carrier waybills. SED found Elias' waybills to lack key information. Elias does not appear to provide a defense or explanation for the lacking information. The Commission finds Elias to be in violation of Pub. Util. Code § 5381.5 and GO 157-D, Part 3 and upholds the recommended fine in the amount of $250.

Violation of Pub. Util. Code § 5389 and GO 157-D Part 6.02 (Violation 7, 5 counts)

Pub. Util. Code § 5389 and GO 157-D Part 6.02 provide that any officer of the Commission shall have access to inspect the facilities and records of a licensed charter-party carrier at any time, and charter-party carriers must "afford the duly authorized representatives of this Commission all reasonable opportunity and facilities to make such an inspection."[9]

SED cited Elias for refusal to meet with an SED officer during regular business hours, refusal to provide income tax records, providing incomplete bank statements and failing to provide a complete waybill history.

In his appeal, Elias states that he is unable to meet with a representative of SED during normal business hours because he holds another job (Showtime Transportation is a weekend-only operation). His appeal does not appear to address incomplete records.

While we are sympathetic that Mr. Elias holds a full-time position outside of Showtime Transportation, his employment situation does not excuse his failure to make his records available for inspection. Officers of the Commission must have access to facilities and records in order to uphold the public safety. The Public Utilities Code and GO 157-D are clear that the Commission shall have access at any time. Denial of access and failure to provide requested paperwork is a clear violation of these provisions. We uphold that Elias violated Pub. Util. Code § 5389 and GO 157-D Part 6.02 and we confirm SED's recommended fine in the amount of $500.

[9] GO 157-D, Part 6.02.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (*See* for example, Pub. Util. Code §§ 451, 5382 and 5387). We are mindful that the statutory schemes under which this citation was issued are intended to secure the safety of charter-party carrier passengers.

We underscore that Elias has appeared to provide contradictory and potentially misleading information regarding his operation to the Commission. Doing so directly undermines the Commission's ability to adequately regulate Showtime Transportation and its obligation to protect the public safety. We remind Elias of its duty to comply with Rule 1 of the Commission's Rules of Practice and Procedure, as well as the potential consequences for noncompliance.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to 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 on interested parties. No comments were received.

FINDINGS

1. Joseph Elias is the owner of Showtime Transportation.

2. SED initially cited Joseph Elias with 8 violations; however, at the February 26, 2016 hearing, SED removed Violation 8 (underreporting gross operating revenue and underpaid PUCTRA fees for 2014, in violation of Pub. Util. Code §§ 5378(a)(9) and 54511 (1 count), thus reducing the FC-718 fine amount from $4,000 to $3,500.

3. Joseph Elias operated Showtime Transportation as a charter-party carrier on three separate occasions, May 3, 2014, May 10, 2014 and August 23, 2014) while operating authority was suspended.

4. On August 23, 2014, the Modesto Police Department cited Joseph Elias' vehicle, SHWTME 2, and the California Highway Patrol impounded the vehicle for operating without authority, and without pubic liability and property damage insurance.

5. Joseph Elias has operated a 20-passenger capacity vehicle on at least 8 occasions.

6. Joseph Elias failed to maintain sufficient public liability and property damage insurance for his 20-passenger capacity vehicle.

7. Joseph Elias operated both of Showtime Transportation's vehicles of record, SHWTME 1 and SHWTME 2, concurrently on four occasions, April 4, 2014, May 17, 2014, December 6, 2014, and December 7, 2014.

8. Joseph Elias had at least one employee that operated Showtime Transportation vehicles during concurrent runs. Elias failed to update his Worker's Compensation Declaration Form to declare this employee.

9. Joseph Elias failed to enroll in an approved Controlled Substance and Alcohol Testing Certification Program during the time period July 2, 2013-March 12, 2015.

10. Joseph Elias failed to provide sufficient access to his records and facilities, thus denying the Commission sufficient access to conduct a comprehensive investigation.

11. Joseph Elias provided information during the course of Safety and Enforcement Division's investigation that was contradictory and misleading.

12. Exhibits SED 2 and SED 4 contain sensitive customer information.

13. The Commission received all exhibits in this proceeding into the record on August 2, 2016.

THEREFORE, IT IS ORDERED that:

1. Citation FC-718 is affirmed as amended to remove Violation 8.

2. Within 30 days from the effective date of this resolution, Joseph Elias (Elias) dba Showtime Transportation, must pay a penalty of $3,500 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, CA 94102. Elias may request a payment plan from the Safety and Enforcement Division.

3. Joseph Elias dba Showtime Transportation must either request a payment plan from the Safety and Enforcement Division or make a full payment of the penalty within 30 days of the effective date of this order. Write on the face of the check or money order "For deposit to the General Fund per Resolution ALJ-326."

4. The Safety and Enforcement Division's (SED's) motions to file exhibits SED 2 and SED 4 under seal are granted for a period of three years. During that period the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the

assigned Commissioner, the assigned Administrative Law Judge (ALJ, the ALJ then designated as Law and Motion Judge, or pursuant to an appropriate nondisclosure agreement.[10] When the Commission's final decision addressing this appeal is no longer subject to judicial review, the Commission's Executive Director shall ensure that all copies of Exhibits SED 2 and SED 4 are returned to SED or destroyed. If SED believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission rules may then provide. This motion shall be filed no later than one month before the expiration date.

5. This proceeding 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:

_____
TIMOTHY J. SULLIVAN
Executive Director

[10] *See* D.98-04-059, Appendix C, for an example of an appropriate nondisclosure agreement.

~~INFORMATION REGARDING SERVICE~~

~~I have electronically served all persons on the attached official service list who have provided an e-mail address for Resolution ALJ-326.~~

~~Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability/hardcopy of the document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.~~

~~The official service list I use is current as of today's date.~~

~~Dated September 22, 2016, at San Francisco, California.~~

~~/s/ LILLIAN LI~~
~~Lillian Li~~

********** **PARTIES** **********

Joseph Elias
DBA SHOWTIME TRANSPORTATION
1810 W. FREMONT STREET
STOCKTON CA 95203
(209) 466-5466
ShowTime209@att.net
For: Joseph Elias, dba Showtime Transportation

Kerriann Sheppard
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3942
sk6@cpuc.ca.gov
For: SED

********** **STATE EMPLOYEE** **********

Arocles Aguilar
Legal Division
RM. 5138
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2015
aro@cpuc.ca.gov

Elizaveta I. Malashenko
Safety and Enforcement Division
RM. 2203
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2349
eim@cpuc.ca.gov

Robert Mason
Administrative Law Judge Division
RM. 5107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1470
rim@cpuc.ca.gov

********* **INFORMATION ONLY** **********

Shanna Foley
Legal Division
320 West 4th Street Suite 500
Los Angeles CA 90013
(213) 620-2465
sf2@cpuc.ca.gov
For: SED

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