

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Order Instituting Investigation on the Commission’s Own Motion Into the Operations and Practices of Andy’s Ultimate Limousines, Inc., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P), and A.L.S., a California Corporation, doing business as Andy’s Limousine Service Transportation (PSG 16218-B) and its President Andrew Wagner, and Vice President Dannetter Wagner, to Determine Whether They Have Violated the Laws, Rules and Regulations Governing the Manner in Which Charter-Party Carriers Conduct Operations and Whether They are No Longer Fit to Continue to Conduct Passenger Transportation Service.

Investigation 04-07-004
(Filed July 8, 2004)

Respondents.

OPINION APPROVING SETTLEMENT

I. Summary

This decision adopts a settlement between respondents Andy’s Ultimate Limousines, Inc., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P) (Ultimate Limousine), and A.L.S., a California Corporation, doing business as Andy’s Limousine Service Transportation (PSG 16218-B) (Andy’s Limousine Service); and its President Andrew Wagner (Wagner) (collectively respondents) and the Commission’s Consumer Protection and Safety Division (CPSD). Under this settlement, respondents will pay a

\$20,000 fine in installments, and are subject to a one-year probation period. The settlement also requires all of respondents' future operations to comply with the law.

II. The Order Instituting Investigation (OII)

A. Respondents

Ultimate Limousine operates under a Class P charter party permit issued on April 13, 1998 and renewed on June 29, 2001. Andy's Limousine Service operates under a Class B charter party permit due to expire on July 14, 2006. Ultimate Limousine does not have a prior violation history. However in 1989, its Chief Executive Officer, Wagner, was issued a field citation for operating as a charter party carrier without Commission authority. Wagner was fined \$560 and paid the fine on the day the citation was served. On August 11, 1992, the Commission issued Investigation (I.) 92-08-010 against Wagner to determine, among other things, whether he maintained adequate liability insurance, whether he operated without such insurance, and whether he operated during periods of suspension. Because there was no activity in this investigation, Decision (D.) 98-03-064 dismissed this OII. On March 31, 1994, the Los Angeles City Attorney's Office filed a criminal complaint against Wagner. Wagner was convicted of one count of operating without Commission authority and one count of violating Section 17500 of the Business and Professions Code (false advertising).

B. The OII's Allegations

On July 8, 2004, this Commission instituted this investigation against respondents alleging 1,480 violations of law. The allegations include the following:

- Operating after Ultimate Limousine's permit was suspended for failure to maintain evidence of public liability insurance coverage on file with the Commission, in violation of § 5379;¹
- Operating without proper insurance coverage, in violation of § 5391 and Commission General Order (GO) 115-F;
- Failing to enroll drivers in mandatory alcohol and controlled substance testing certification program, in violation of § 5374(a)(2) and GO 157-C, Part 10;
- Failing to enroll drivers in the Department of Motor Vehicles (DMV) Pull Notice Program,² in violation of § 5381 and GO 157-C, Part 5.02;
- Employing at least 20 employee-drivers who did not possess the proper California driver's license to drive carriers' buses, in violation of GO 157-C, Part 5.01;
- Failing to file with the Commission an equipment list of all vehicles, either owned or leased, in use under each certificate and permit, in violation of GO 157-C, Part 4.01;
- Operating vehicles with larger seating capacities than are authorized by the charter party permits, in violation of § 5371;

¹ Unless otherwise stated, all statutory references are the California Public Utilities Code.

² The Pull Notice Program tracks and monitors the driver license status of an employee driver and reports to the employer if the driver's driving privilege has been suspended or revoked.

- Failing to maintain transportation documentation (waybills) for each prearranged trip, in violation of GO 157-C, Part 3.01; and
- Failing to maintain a Commission identifying symbol on every vehicle, in violation of § 5385.

III. Procedural History; Settlement

Detailed staff declarations, together with supporting documents, were filed with the OII. On September 16, 2004, the Commission held a prehearing conference and scheduled hearings. Before respondents served testimony, the parties informed the Commission they had reached a settlement and the Commission cancelled the hearings.

On November 5, 2004, CPSD and respondents filed a motion for Commission adoption of a settlement, together with the settlement. A copy of the settlement is attached as Appendix A. According to the settlement, respondents shall:

- Pay a \$20,000 fine in installments;
- Be subject to a year probationary period; and
- Take responsibility for past violations and agree to be in full compliance with the law in the future.

IV. Discussion

A. Standard of Review

Rule 51.1(e) of the Commission's Rules of Practice and Procedure provides that the settlement must be reasonable in light of the whole record, consistent with the law, and in the public interest for the Commission to approve it. We examine the settlement in light of these three criteria.

B. Reasonable In Light of the Whole Record

The settlement is reasonable because the outcome effectively deters future violations, imposes reasonable fines, and brings about compliance with the law. The settlement is also reasonable in that it takes into account the severity of the violations as well as respondents' cooperation with Commission staff.

The evidence filed with the OII indicates that respondents committed numerous violations of the rules governing operations. These violations are serious, and the settlement imposes a \$20,000 fine. This fine is reasonable in that it is severe enough to properly reprimand respondents for past illegal actions, and indicates to respondents that the Commission is serious about enforcing its rules. The fine is also large enough to encourage respondents to make regulatory compliance a high priority in the future, but is not so large so as to cause respondents to cease operations.

The settling parties explain that the severity and frequency of respondents' violations, while serious, are not grounds for recommending a revocation of license at this time. For example, the most serious alleged violation is respondents' operation during a period of license suspension for failure to maintain proper insurance coverage. However, respondents have demonstrated to staff that the insurance coverage never lapsed, and that the license was mistakenly suspended because respondents did not perform the necessary diligence in providing the appropriate paperwork to the Commission's License Section. The settlement requires that respondents take full responsibility to ensure the Commission has all the required documentation in the future.

Under the settlement, respondents acknowledge that their operations were not in full compliance during staff's audits, and respondents commit to

fully comply with the laws and regulations governing their operations. The motion for approval of the settlement states that in order to facilitate compliance, respondents have hired a new office manager. According to respondents, during 2002-2003 when many of the record-keeping problems occurred, the office manager was under severe personal stress and unable to manage business affairs properly. Respondents believe their new management team will assist them in complying with all laws and regulations. For the above reasons, we find the settlement to be reasonable in light of the whole record.

C. Consistent With the Law

The settlement is consistent with the law because it consists of appropriate remedies in light of the allegations in the OII and Commission precedent. Sections 5378(b) and 5415 provide in general that respondents could be fined up to \$5,000 per violation. The \$20,000 fine, paid in four installments, is a reasonable compromise in order to penalize for past violations, deter future operations, as well as to permit respondents to continue to operate their business.

The fine and length of probation are consistent with the penalties the Commission has imposed upon other passenger carriers (carriers). For example, D.03-10-079, *Re Tour Designs*, 2003 Cal. PUC LEXIS 524 involved a carrier who provided service after expiration of its permit, falsified a California Highway Patrol report, failed to enroll its drivers in the DMV Pull Notice Program, and failed to remove its identifying Commission number after suspension. The Commission denied the carrier's application for a charter party carrier permit with prejudice to the carrier filing for such permit again within a year, fined the carrier \$10,200 and also imposed costs of investigation of \$8,633.21. D.96-07-037, *Re Ambassador Limousine Service*, 1996 Cal. PUC LEXIS 789, 67 CPUC2d 33,

involved a carrier who, among other things, operated without evidence of workers' compensation insurance coverage on file, operated during a period of suspension, allowed a driver to operate a vehicle without the proper driver's license issued by the DMV, and operated without proper enrollment in the DMV Pull Notice Program. The Commission adopted a settlement imposing a \$24,000 fine, with \$12,000 stayed if respondent fully complied with the settlement, a two-year probation, and an 11 day suspension. D.94-10-019, *Re Coast Shuttle, Inc.*, 1994 Cal. PUC LEXIS 725, involved allegations that a carrier operated during a period of suspension, failed to maintain a current equipment list, failed to file an annual report and failed to comply with safety requirements. The Commission adopted a settlement imposing a fine of \$10,000 payable over ten months, and a two-year probation.

Respondents' violations, including the failure to provide proper records to the Commission and keep drivers in the required Pull Notice Program and properly licensed, are similar to the violations found in the above proceedings. The settlement here is consistent with Commission precedent and therefore is consistent with the law.

D. In the Public Interest

The public interest in charter party carrier regulation is high, because the regulations governing these operators in large part address public safety. The settlement is in the public interest because it penalizes operators for failing to follow applicable law. Thus, respondents' improper practices should cease. The settlement also requires respondents to comply with all applicable laws in the future, and the fine deters future violations by respondents and other carriers. Thus, the settlement enhances public safety.

V. Categorization and Need for Hearings

In the initiating order, the Commission categorized this matter as adjudicatory and preliminarily determined that hearings would be required. The adjudicatory categorization need not be altered, but we find that hearings are not required based on the approved settlement.

VI. Comments on Draft Decision

Pursuant to Pub. Util. Code § 311(g)(2) and Rule 77(f)(2) of the Commission's Rules of Practice and Procedure, we waive the comment period to this draft decision because this is an uncontested settlement where the decision grants the relief requested.

Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Janet A. Econome is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. The settlement effectively deters future violations, imposes reasonable fines, and brings about compliance with the law. It also takes into account the severity of the violations as well as respondents' cooperation with Commission staff.
2. The settlement consists of appropriate remedies in light of the allegations in the OII and Commission precedent.
3. The fine and length of probation are consistent with the penalties the Commission has imposed upon other passenger carriers.
4. The public interest in charter party carrier regulation is high, because the regulations governing these operators in large part address public safety.
5. The settlement penalizes operators for failing to follow applicable law; thus, respondents' improper practices should cease.

6. The settlement enhances public safety because it requires respondents to comply with all applicable laws in the future, and the fine deters respondents and other carriers from future violations.

7. Evidentiary hearings are not required.

Conclusions of Law

1. The settlement between respondents and CPSD attached to this decision, as Appendix A, is reasonable, consistent with the law, and in the public interest and should be improved.

2. In order to ensure proper compliance with this settlement, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The settlement between respondents Andy's Ultimate Limousines, Inc., a California Corporation, doing business as The Ultimate Limousine (PSG-11646-P); A.L.S., a California corporation, doing business as Andy's Limousine Service Transportation (PSG 16218-B); and their President Andrew Wagner, and the Commission's Consumer Protection and Safety Division, attached to this decision as Appendix A, is approved.

2. This is a final determination that evidentiary hearings are not required.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Econome Agenda Dec Attachment A