
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

May 23, 2008

Agenda ID #7648

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-WALWYN

This draft resolution regarding appeal of Citation FC-5165, affirming in part and dismissing in part, pursuant to Resolution ALJ-187 will be on the agenda at the June 26, 2008 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 June 12, 2008, and reply comments shall be served no later than June 17, 2008. 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 Walwyn at cmw@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG: lil

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-220
Administrative Law Judge Division
June 26, 2008

R E S O L U T I O N

RESOLUTION ALJ-220. In the Matter of the Appeal of Citation FC-5165, affirming in part and dismissing in part, pursuant to Resolution ALJ-187.

This Resolution resolves the appeal of Field Citation 5165 (FC-5165), issued to DMK International, Inc., dba New Life Charters by the Commission's Consumer Protection and Safety Division (CPSD) on August 28, 2007. FC-5165 was issued for violations by New Life Charters, a charter-party "B" carrier, for the period of July 1, 2006 to October 31, 2006. CPSD's FC-5165 assessed a \$6,000 fine, based on 62 counts of violating the California Public Utilities Code and the Commission's General Order (GO) 157-D. Specifically, FC-5165 charges New Life Charters of (1) operating as a charter-party carrier after suspension and revocation of its authority in violation of Public Utilities Code Section 5379 (46 counts), (2) engaging five employees without evidence of workers' compensation insurance coverage in effect and on file with the Commission in violation of Section 5378.1 (five counts), (3) failing to enroll two employee drivers in the Department of Motor Vehicles (DMV) Employer Pull Notice Program in violation of Section 5374(a)(2) and Part 5.02 of GO 157-D (two counts), and (4) engaging unlicensed subcarriers in violation of GO 157-D, Item 3.04 (nine counts).

Based on the hearing record, we find that the legal identity of the appellant is Ms. Tishab Sanders, doing business as New Life Charters. We affirm FC-5165 for all counts except the failure to enroll two employees in DMV's Employer Pull Notice Program, and correspondingly reduce the fine to \$5,500. We direct Ms. Sanders to pay this fine in full within 30 days of this resolution or to begin to make payments within 30 days based on an approved written payment plan with CPSD. Further, we direct Ms. Sanders to reference this proceeding in any future new or renewal applications she makes, individually or under a corporate name, for a charter-party certificate.

Background

Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, CPSD 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. On September 10, 2007, Ms. Sanders filed a notice of appeal of FC-5165 in the name of New Life Charters, Tishab Sanders, and Michael Palmer. This notice was forwarded to the Administrative Law Judge Division by CPSD on January 3, 2008. Pursuant to the appeal procedures adopted by the Commission in Resolution ALJ-187, an evidentiary hearing was noticed and held in Los Angeles on April 10, 2008. The evidentiary record was submitted on April 30, 2008, following the receipt of late-filed Exhibit 12.

This Resolution is issued for public review and comment in accordance with Public Utilities Code Section 311, subdivision (g).

Findings of Fact

1. The charter-party operating authority for New Life Charters, TCP #019955B, was suspended effective June 20, 2006, for failure to maintain on file with the Commission a valid certificate of workers' compensation insurance. Notice was given to New Life Charter that unless this deficiency was corrected within 90 days of the date of the suspension notice, its operating authority would be revoked.¹
2. An order of revocation of New Life Charters' operating authority was issued on September 18, 2006. The operating authority was reinstated effective November 3, 2006. ²
3. On October 16, 2006, a cease and desist letter was mailed to New Life Charters. A copy of this letter was personally served on Ms. Sanders on October 25, 2006.³
4. The above orders of suspension and revocation, and the cease and desist letter were all mailed to New Life Charters at the address of 2708 W. Cypress St., Compton, California, 90220. This is the same mailing address as shown on New Life Charters check #263, dated June 21, 2006, which was submitted by Ms. Sanders as late-filed Exhibit 12.
5. Between July 6, 2006 and October 28, 2006, New Life Charters conducted 46 days of operation without authority, as shown in summary Table 1 and in Attachment 4 of Exhibit 2.

¹ Exhibit 2, Attachment 1.

² *Id.*

³ *Id.*

6. New Life Charters engaged five employees without evidence of workers' compensation insurance coverage in effect and on file with the Commission, as shown in Table 2 and Attachment 6 of Exhibit 2.
7. The DMV certified driver printout at Exhibit 8 shows the enrollment of John Cole and Terresha Lacey as drivers. The form has a hand-written date of June 14, 2006 and a DMV date stamp of September 15, 2006. Exhibit 12, Ms. Sanders' New Life Charter check #263, made payable to DMV and dated June 21, 2006, establishes that DMV cashed this check on June 30, 2006. It is reasonable to use a date of June 21, 2006 as the date of DMV enrollment for these drivers.
8. Table 3-2 of Exhibit 2 shows that John Cole and Terresha Lacey did not work for New Life Charters as drivers until July, 26, 2006.
9. New Life Charters hired nine unlicensed subcarriers to perform charter-party transportation between June 13, 2006 and September 22, 2006, as shown in Table 3-2 and Attachment 8 of Exhibit 2.
10. The level of fine imposed is reasonable based on the number and type of violations, New Life Charters' fleet size and revenues, and the insurance premiums that may have been saved due to the failure to comply with workers' compensation insurance requirements. The level of CPSD's fine is also consistent with fines assessed for similar violations by other charter-party carriers.⁴
11. A \$500 reduction in the fine to reflect the removal of two counts of violation of DMV's Employer Pull Notice Program is reasonable.
12. At the hearing on April 10, 2008, Ms. Sanders appeared for the appellant and identified herself as the owner of New Life Charters. She then testified that New Life Charters had always been under her sole ownership and control and that Michael Palmer, a director of DMK International, Inc. (DMK), had allowed her to use DMK's tax ID number to help her get her charter-party business started. Further, Ms. Sanders testified that she had never been a director of DMK and had not been able to contact Mr. Palmer since October 2006.⁵
13. Exhibit 9 is the December 6, 2005 application of DMK International, Inc. dba New Life Charters for charter-party carrier authority. The application relies on Ms. Sanders experience working for school bus and charter-party companies between 1994 and 2005. The application contains specific agency and code section references to the requirements for safety of operations and insurance coverage for a charter-party carrier, and is signed by Ms. Sanders.
14. New Life Charters is no longer in business.

⁴ See Transcript at page 10.

⁵ See Tr. at pages 1, 42, and 79-80.

15. Ms. Sanders and CPSD both state that Ms. Sanders has a pending application for charter-party operating authority under a new business entity.

Conclusions of Law

1. New Life Charters operated as a charter-party carrier for 46 days, between July 1, 2006 and October 31, 2006, in violation of Public Utilities Code Section 5379 (Section 5379).
2. New Life Charters engaged five employees without evidence of workers' compensation insurance coverage in effect and on file with the Commission in violation of Section 5378.1.
3. New Life Charters engaged nine unlicensed subcarriers in violation of General Order 157-D, Item 3.04.
4. Substantial evidence in the record establishes that Ms. Sanders, doing business as New Life Charters, is the legal identity of the appellant.
5. The record does not support a finding that New Life Charters failed to enroll two employee drivers in DMV's Pull Notice Program.
6. The notices of suspension and revocation were properly served on Ms. Sanders and New Life Charters.
7. Operating as a charter-party carrier in California is a privilege and this privilege carries with it a responsibility to fully comply with all the regulations and laws of the State of California.
8. The citation fine of \$6,000, FC-5165, should be reduced by \$500 to reflect the removal of two counts of violation of DMV Employer Pull Notice Program compliance. The remaining fine of \$5,500 is reasonable and should be paid by Ms. Sanders.
9. Ms. Sanders should pay the fine in full within 30 days of this resolution or begin to make payments within 30 days based on an approved written payment plan with 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.
10. If Ms. Sanders 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 applicable statutes and Commission orders.
11. Ms. Sanders' experience as the owner of New Life Charters should be considered in evaluating her fitness to hold future charter-party authority in her own name or under a new business entity.

12. Based on the circumstances of this case, it is appropriate to require Ms. Sanders, or any business entity she owns, to reference this proceeding and the related fine in any future applications of charter-party operating authority in this state.

IT IS THEREFORE ORDERED that:

1. Citation FC-5165 is affirmed except as provided herein.
2. Appellant Ms. Tishab Sanders shall pay a fine of \$5,500 in full within 30 days of this resolution or begin to make payments within 30 days based on an approved written payment plan with 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.
3. If Ms. Sanders 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 applicable statutes and Commission orders.
4. Ms. Sanders, or any business entity she owns, shall reference this proceeding and the related fine, in any future applications for charter-party operating authority in this state.
5. The appeal process for this citation 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 _____, 2008, the following Commissioners voting favorably thereon.

PAUL CLANON
Executive Director

INFORMATION REGARDING SERVICE

I have served the foregoing Draft Resolution ALJ-220 on the attached special service list developed for this purpose (see Rules 1.9 and 1.10 of the Commission's Rules of Practice and Procedure).

Dated May 23, 2008, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li

Service List

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