

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-278
Administrative Law Judge Division
May 10, 2012

R E S O L U T I O N

RESOLUTION ALJ-278. Affirming Citation F-5187 issued to Benito Vasquez, individually and dba El Camino Transportation.

SUMMARY

This resolution resolves the appeal of Citation F-5187, issued to Benito Vasquez, individually and dba El Camino Transportation (TCP 22636) (Respondent) by the Commission's Consumer Protection and Safety Division (CPSD) on November 23, 2011, pursuant to its authority under Resolution ALJ-187.

Citation F-5187 issues a fine of \$7,000 for eight violations (140 counts) of the Public Utilities Code and the Commission's General Orders 115-F and 157-D during the period of December 13, 2010 through April 13, 2011.

Benito Vasquez, as Owner of El Camino Transportation, submitted an appeal on December 13, 2011. An evidentiary hearing was held in Los Angeles on February 15, 2012, and the matter was submitted on February 29, 2012 after the expiration of five business days for Mr. Vasquez to file late filed exhibits and five days for CPSD to respond to any late filed exhibits. Based on the record, the citation is affirmed and the payment of the \$7,000 fine is ordered. We order Respondents, Benito Vasquez, an Individual dba El Camino Transportation to cease and desist from continuing each and every cited violation.

ALLEGED VIOLATIONS

Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, the Commission's Consumer Protection and Safety Division (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. The procedures governing the appeal of CPSD's citations are set forth in Resolution ALJ-187.

On November 23, 2011, CPSD issued Citation 5187 (F-5187) ordering Benito Vasquez (Vasquez), individually and dba El Camino Transportation to pay a fine in the amount of \$7,000 for violations that occurred during the period December 13, 2010 through April 13, 2011.¹ The violations were:

1. Operating during a period of suspension and subsequent expiration of its charter party carrier certificate in violation of Public Utilities Code Section 5379 (80 counts);
2. Operating during a period of lapse in Public Liability and Property Damage (PL&PD) insurance coverage in violation of Public Utilities Code Sections 5387 and 5391, General Order (GO) 157-D, Part 1.05 and GO 115-F (l)(9) (27 counts); and,
3. Engaging at least one driver without evidence of Workers Compensation Insurance (WCI) in effect and on file with the Commission in violation of Public Utilities Code Section 5378.1 (33 counts).

On December 13, 2011, Vasquez appealed Citation F-5187,² asserting that:

1. The home to school transportation work that was done by El Camino Transportation (El Camino) during the period of December 13, 2010 through April 13, 2011 was lawfully performed pursuant to the authority conveyed upon Vasquez and El Camino by School Bus Contractor License Number 225560 issued by the California Highway Patrol. Vasquez cited California Vehicle Code Sections 492, 545, 546, 2808, 91025(c), Education Code Sections 39800, 39831.3, and 8232, and Public

¹ Exhibit 1.

² Exhibit 4.

Utilities Code Sections 226, 3910, 5353, and 5360 as authority for the lawfulness of the work El Camino performed.

2. During this period El Camino leased a different bus to do its work.
3. El Camino's operations were covered by PL&PD insurance during the period of December 12, 2010 through January 21, 2011.
4. El Camino was covered by WCI from December 21, 2007 through March 3, 2011.
5. Vasquez and El Camino committed no violations.

BACKGROUND

On February 15, 2012 a citation appeal hearing was held, pursuant to Resolution ALJ-187, in Los Angeles, California. Vasquez appeared In Pro Per. The Commission's CPSD, through its Attorney, Ms. Selina Shek (Attorney Shek), presented its case through its witnesses Associate Transportation Representative, Shontanro Taylor (ATR Taylor) and Supervising Transportation Representative, Adrienne Johnson (STR Johnson).

CPSD submitted a total of eight exhibits including a copy of Citation F-5187, the Report of Investigation of ATR Taylor, a copy of the Vasquez 2007 application for charter party carrier authority, the Vasquez Notice of Appeal of Citation F-5187, a copy of a subcontracting agreement between El Camino and LP Express dated December 14, 2010, a copy of a Fax from LP Express dated February 14, 2012, a copy of a Certificate of WCI issued by the State Compensation Insurance Fund (SCIF) evidencing a coverage inception date of December 1, 2010 for Policy Number 1893322-2010, and a copy of Commission Resolution ALJ-220 resolving the Appeal of Citation FC-5165 issued to DMK International, Inc. dba New Life Charters.

CPSD asked that the Judge take judicial notice of Public Utilities Code Sections 226(b), 5278.1, 5360, 5379, 5387, 5391, 5413, 5415, Commission GO 57-G, Part 1.05 and GO 115-F.

Vasquez submitted a total of six exhibits, including a copy of School Bus Contractor License Number 225560,³ issued by the Department of California Highway Patrol and dated December 30, 2010, and copies of pages 5-56, 6-4, 6-5, 6-26, and 7-2 from a California Highway Patrol “handbook” labeled Rev 5-00, HPM 82.7.⁴

Vasquez asked that the Court take judicial notice of Public Utilities Code Sections 5353 and 5411.

ATR Taylor testified fully concerning the elements of each of the violations alleged in Citation F-5187, and the criterion by which the level of the penalty was calculated.⁵

Vasquez had no cross-examination questions for ATR Taylor,⁶ offered no evidence to refute the facts contained in ATR Taylor’s report of investigation and offered no evidence to refute Allegations 2 and 3 of Citation F-5187. Vasquez testified that he believed that he was exempt from charter party carrier licensure during the period in controversy because his company was licensed as a school bus contractor.⁷ Vasquez testified that his company has been licensed by a school bus contractor since 2006 or 2007,⁸ and that he believed he only needed charter party carrier authority from the Commission if he engaged in transportation outside of “school bus related” trips, such as sightseeing trips and trips for churches.⁹ Vasquez testified that the law exempted his company from PUC authority when he transported students for private schools¹⁰ and he was given extra time to submit legal authority for his assertion.¹¹ Vasquez testified that PUC staff has informed him that he needs PUC Charter Party Carrier authority.¹² Vasquez testified that he believed the penalty should be \$1,000, pursuant to Public Utilities Code Section 5411, that his business had fallen off substantially since July of 2011, but that he could pay the penalty if CPSD would assist him in obtaining a release of payments being held in abeyance by the Yavneh Hebrew Academy and the Maimodes Academy totaling approximately \$13,000.

³ See Transcript (Tr.) at 34, lines 20 - 26.

⁴ See Tr. at 35 and 36.

⁵ See Tr. at 3 - 27 and 48 - 51.

⁶ See Tr. at 27, line 21, and at 37, lines 23 and 24.

⁷ See Tr. at 39, line 16 - 18.

⁸ See Tr. at 40, lines 5 - 6.

⁹ See Tr. at 40, lines 25 - 28, and at 41, lines 1 - 6.

¹⁰ See Tr. at 43, line 28, and at 44, lines 1 - 4, and 14 - 22.

¹¹ See Tr. at 46, lines 23 - 27, and at 47, lines 2 - 5.

¹² See Tr. at 58, lines 7 - 25.

STR Johnson testified that the legal authorities Vasquez cited do not provide a defense for his actions because Vasquez provided transportation for private schools, not public schools. STR Johnson testified that Public Utilities Code Section 5353(b) exempts school bus operators who contract with public schools to provide transportation services.¹³

Vasquez was given five business days to submit further statutory authority for the lawfulness of operating without charter party carrier authority from the Commission when contracting with a private school to provide student transportation services. CPSD was given five business days to respond to any submission made by Vasquez. Vasquez did not submit any further information, CPSD did not submit any response, and the matter stands submitted as of February 29, 2012.

DISCUSSION

CPSD's testimony and exhibits were unchallenged by Vasquez and appear credible. None of the legal authorities relied upon by Vasquez support his defense, and Vasquez's testimony lacks credibility in his assertion that he acted in good faith when he relied upon these legal authorities.

In his appeal, Vasquez asserted that he had PL&PD and WCI coverage during the period of the alleged violations, but offered no evidence at hearing to prove his assertions, and questioned none of the facts asserted by CPSD witness ATR Taylor. In his appeal, Vasquez asserted that he had subcontracted El Camino's work to LP Express during the period of the alleged violations, an assertion that was proven false by CPSD's Exhibit 6 and the testimony of ATR Taylor.¹⁴ Moreover, Vasquez did not challenge either Exhibit 6 or the testimony of ATR Taylor.

According to CPSD Exhibit 2, Vasquez was criminally prosecuted in 2007 and plead no contest to charges of operating without a valid permit. Vasquez was ordered to pay fines, penalties, costs of investigation, was placed on probation for 12 months and was ordered to obey all laws.¹⁵ CPSD Exhibit 3, demonstrates that on August 22, 2007, Vasquez was transporting students to and from school and on field trips when he applied for, and received, Commission authority to operate as a charter party carrier. Exhibit 3 further demonstrates that Vasquez had 15 years experience in such operations on August 22, 2007.

¹³ See Tr. at 52, line 28 – at 54, line 16.

¹⁴ See Tr. at 19, line 21 – at 20, line 5.

¹⁵ See Exhibit 2, at 2, Enforcement History.

CPSD Exhibit 2 also demonstrates that Vasquez was notified that his authority to operate as a charter party carrier was suspended on December 13, 2010,¹⁶ and expired on December 21, 2010.¹⁷ It further documents that Vasquez applied for renewal of his authority on January 4, 2011,¹⁸ stated that he had employees,¹⁹ was ordered to cease and desist operations on April 15, 2011,²⁰ was verbally warned that he was operating in violation of the law on at least two occasions when he met with ATR Taylor on May 3, 2011 and May 4, 2011²¹ and was informed that his application was denied on May 16, 2011 due to failure to provide proof of WCI and due to failure to pay Public Utilities Commission Transportation Reimbursement Account (PUCTRA) fees.²²

None of the authorities cited by Vasquez in Exhibits 8, 9, 10, 11, 12, or 13 support his assertion that he was not required to have Commission authority when he transported students to and from the Yavneh Hebrew Academy (a K-12 private school) on at least 80 occasions during the period of December 13, 2010 to April 13, 2011, and to and from the Maimodes Academy (a private school) on at least six occasions during the period of May 10, 2011 through September 14, 2011. Public Utilities Code Section 5353 provides an exemption for those providing transportation of school pupils conducted by or under contract with the governing board of any school district entered into pursuant to the Education Code, but no such exemption exists for transporting school pupils of private schools, which are not subject to the contracting provisions of the Education Code. Section 5353 was last changed in 2006, and the change became effective on January 1, 2007. Consequently, Section 5353's requirement that Vasquez have charter party authority when contracting with private schools to transport their pupils has not changed since at least January 1, 2007.

FINDINGS OF FACT

1. Benito Vasquez was criminally prosecuted in 2007 and plead no contest to charges of operating without a valid permit. Vasquez was ordered to pay fines, penalties, costs of investigation, was placed on probation for 12 months and was ordered to obey all laws.

¹⁶ See Exhibit 2, Tab 1, at 1.

¹⁷ See Exhibit 2, Tab 1, at 2.

¹⁸ See Exhibit 2, at 2.

¹⁹ See Exhibit 2, Tab 9, at 1.

²⁰ See Exhibit 2, Tab 2, at 1 - 2.

²¹ See Exhibit 2, at 3, lines 1 - 19.

²² See Exhibit 2, Tab 1, at 3.

2. On December 21, 2007 Transportation Charter Party Carrier (TCP) Permit 22636 was issued to Benito Vasquez dba El Camino Transportation.
3. On December 12, 2010 El Camino's PL&PD Insurance Policy # PA00201252 issued by State National Insurance Company was cancelled.
4. On December 13, 2010 El Camino was notified that its charter party carrier authority was suspended due to the lapse in its PL&PD insurance coverage.
5. On December 14, 2010 El Camino and LP Express signed a subcontractor agreement.
6. On December 20, 2010, California Highway Patrol School Bus Contractor Non-Transferable License Number 225560 was issued to El Camino.
7. On December 21, 2010, TCP Permit 22636 expired.
8. On December 21, 2010, Vasquez was notified that TCP Permit 22636 had expired.
9. On January 4, 2011, Vasquez applied for reinstatement of Charter Party Carrier License 22636 operating authority.
10. On January 21, 2011, El Camino re-established its PL&PD insurance coverage with Policy Number IXG412048 issued by General Star Indemnity Company.
11. On March 3, 2011, SCIF cancelled its WCI Policy Number 1893322-2010 issued to El Camino.
12. On April 25, 2011, Vasquez was notified in writing by the Commission that he was to cease and desist operating without Commission authority to do so.
13. On at least May 3, 2011 and May 4, 2011, Vasquez was verbally warned by ATR Taylor that he was operating in violation of the law.
14. On May 16, 2011, Vasquez was notified in writing that El Camino's January 4, 2011 application for reinstatement of its authority was denied due to its not having WCI coverage in effect and due to its having regulatory fees owing to the PUCTRA.
15. On August 1, 2011, SCIF issued WCI coverage to El Camino under Policy Number 1976744-11.
16. The Yavneh Hebrew Academy is a private K-12 school.
17. The Maimodes Academy is a private school providing early childhood, elementary, and middle school education.
18. El Camino provided pupil transportation services to the Yavneh Hebrew Academy on at least 80 occasions between December 13, 2010 and April 13, 2011.

19. El Camino provided pupil transportation services to the Maimodes Academy on at least six occasions between May 10, 2011 and September 14, 2011.
20. El Camino's charter party carrier authority was reinstated sometime after mid-September 2011.
21. On November 23, 2011, CPSD issued Citation 5187 (F-5187) ordering Vasquez to pay a fine in the amount of \$7,000 for violations that occurred during the period December 13, 2010 through April 13, 2011.
22. CPSD based its penalty calculation upon a consideration of the nature of the violations, the carrier's revenue, the carrier's willingness to cooperate, the egregiousness of the violations, the carrier's fleet size, the carrier's prior enforcement history, and similar penalties paid by other carriers violating the same code sections.

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 by the interested parties. No comments were filed.

CONCLUSIONS OF LAW

1. California Public Utilities Code Section 5353 does not exempt Charter Party Carriers of Passengers who contract with private elementary and secondary schools to transport pupils from the requirement to obtain and maintain operating authority from the Commission.
2. Benito Vasquez, an Individual dba El Camino Transportation operated during a period of suspension and subsequent expiration of its charter party carrier certificate in violation of Public Utilities Code Section 5379 on at least 80 occasions between December 13, 2010 and September 14, 2011;
3. Benito Vasquez, an Individual dba El Camino Transportation operated during a period of lapse in PL&PD insurance coverage in violation of Public Utilities Code Sections 5387 and 5391, GO 157-D, Part 1.05 and GO 115-F (l)(9) on at least 27 occasions between December 13, 2010 and January 20, 2011; and,

4. Benito Vasquez, an Individual dba El Camino Transportation engaged at least one driver without evidence of WCI in effect and on file with the Commission in violation of Public Utilities Code Section 5378.1 on at least 33 occasions between March 3, 2011 and April 13, 2011.
5. CPSD's penalty calculation is consistent with the factors the Commission articulated in Decision 98-12-075.

THEREFORE, IT IS ORDERED that:

1. Citation F-5187 is affirmed.
2. Benito Vasquez must pay a penalty of \$7,000 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, Room 3000, San Francisco, CA 94102, 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-273."

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 May 10, 2012, the following Commissioners voting favorably thereon:

/s/ PAUL CLANON
PAUL CLANON
Executive Director

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners