PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-189
Administrative Law Judge Division
January 12, 2006

R E S O L U T I O N

RESOLUTION ALJ-189 in the Matter of the Appeal of Citation FC-015 Affirming the Citation Pursuant to Resolution ALJ-187.

Maria L. Bondonno, attorney at law, Legal Division, for the Consumer Protection and Safety Division of the California Public Utilities Commission.

George Rizk, in pro per, for respondents George Rizk, Joseph Eid, and Hashem Ahmad, doing business as GGG Limousine.

Findings of Fact

1. On October 6, 2005, the Commission served Citation number FC-015 on GGG Limousine (respondent) in accordance with Resolution ALJ-187. Respondent served a timely Notice of Appeal on CPSD. Administrative Law Judge Victor D. Ryerson heard the matter on November 10, 2005, in San Francisco. The hearing was concluded, and the matter was submitted, on that date.

2. Respondent is a partnership owned by George Rizk, Joseph Eid and Hashem Ahmad. On April 22, 2004, the Public Utilities Commission of the State of California (Commission) granted Class P Charter-Party Permit number TCP017323-P to respondent.

3. On June 8, 2005, the Consumer Protection and Safety Division of the Commission (CPSD) conducted an inspection of limousines at San Francisco International Airport (SFO). During the course of the inspection Supervising Investigator Suong Le interviewed Akeel Jassim Abood, who was driving a vehicle bearing license plate number "GRAND 22" and Vehicle Identification Number 619198 (GRAND 22). Abood identified himself as an employee of respondent, which is the registered owner of GRAND 22. The Commission's records did not show that Abood was one of respondent's drivers, and CPSD conducted a further investigation.

Abood and Rizk subsequently claimed that Abood drove GRAND 22 to SFO that day only to drop off a friend. However, Abood's initial disclosure that he was driving the car in the capacity of a GGG Limousine employee carries considerably more weight than his subsequent explanation that he was taking an unnamed friend to the airport. A letter Abood wrote on respondent's behalf on September 8, 2005, which was received in the record, fails to provide such verifiable corroboration of Rizk's story as the identity of Abood's car, where it was being repaired, or his friend's name.

4. On September 15, 2003, respondent submitted to the Commission a Workers' Compensation Declaration Form (TL706-K) that states that the respondent did not at that time have any employees, and represents that if the company hired employees in the future, it would submit an amended Workers' Compensation Declaration Form to the Commission and contact its insurance company at once to have the required certificate of coverage mailed to the Commission. The form was certified under penalty of perjury by each of respondent's partners. Respondent has not submitted an amended declaration to the Commission.

5. On February 15, 2005, respondent requested that Abood be added as a driver to its National Casualty Company liability insurance policy, number CAOL006116, which was effective from April 20, 2004, until April 20, 2005, and Abood was covered pursuant to respondent's request. Abood is also shown as a driver under respondent's subsequent policy, number CAOL007150, which is effective from April 20, 2005, to April 20, 2006. These facts support the inference that he was respondent's employee. Obtaining additional coverage for Abood increased the company's insurance cost. Although it is possible that respondent did this as a precaution in contemplation of hiring Abood as a driver in the future, it is not likely.

6. Abood is not enrolled as a driver for respondent in the California Department of Motor Vehicles (DMV) Pull Notice Program.

7. Abood is not enrolled as a driver for respondent in the Controlled Substance and Alcohol Testing Certification Program, and respondent did not conduct pre-employment testing of Abood as part of that program.

8. On February 25, 2005, the Commission received a Notice of Cancellation of Bodily Injury Liability and Property Damage Liability Insurance from National Casualty Company, which notified the Commission of the cancellation of policy number CAOL06116 [sic] as of April 20, 2005. In response to the notice, on March 21, 2005, the Commission sent respondent a Notice of Impending Suspension notifying respondent that its permit would be suspended, effective April 20, if respondent did not file evidence of adequate insurance coverage by that date. On April 20, 2005, the Commission issued an order suspending respondent's permit because the Commission had not received the required evidence of coverage, and sent it to respondent by First Class Mail. Rizk contends that respondent did not receive the Commission's suspension order, and argues that that all such orders should be sent by certified mail to ensure receipt. His contention is not credible, nor his argument compelling. Respondent received all of the other communications from the Commission that were mailed to the same address, and there is no circumstance to suggest that respondent did not receive the suspension order as well.

On April 26, 2005, the Commission received a certificate of insurance under National Casualty Company policy number CAOL007150 on behalf of respondent. On April 29, 2005, the Commission issued a Notice of Reinstatement of respondent's operating authority.

9. Trip records for respondent show that respondent operated four days during the period that its permit was suspended in April 2005. During that period respondent's limousines made 28 trips to SFO.

10. Between the months of April and August 2005, respondent did not have a permit from the Port of Oakland to operate at Oakland International Airport (OAK). Trip records show that its vehicles with license numbers GRAND 22 and GRAND 24 operated at OAK numerous times during that period. The Port's records show that GRAND 22 and GRAND 24 belonged to Grand Sedan Service LLC (Grand) at this time, and were operated at OAK under a permit that had been granted to that company. George Rizk testified that respondent had purchased GRAND 22 and GRAND 24 from Grand.

11. Rizk testified that Abood was not employed by respondent, and that only he and his two partners were drivers for the company, because the company could not afford to employ any drivers. He explained that Abood drove GRAND 22 to SFO on June 8, 2005, because Abood's car was being repaired, so respondent allowed Abood to use the car to take a friend to the airport. When he

was interviewed by the CPSD investigator, Rizk admitted that he knew he should not have allowed Abood to use the car.

Rizk also explained that he had added coverage for Abood under respondent's liability insurance policy in anticipation that respondent would hire Abood, but that respondent never did so. Rizk claims that he attempted to remove Abood from respondent's current policy, but was unsuccessful in doing so because it was contrary to his insurance broker's normal practice.

12. Abood did not testify at the hearing but, as set forth above, he provided a brief letter for the record. His letter denies that he has ever been employed by respondent, as he has his own business and holds his own permit, number TCP 13393-P. He also claims that he used respondent's car to drop a friend at the airport on June 8 because his car was in the shop.

Conclusions of Law

1. Public Utilities Code Section 5378.1, subdivision (a), requires every charter-party carrier to file evidence of workers' compensation coverage for its employees, unless it has certified that it does not employ any person in any manner so as to become subject to California's workers' compensation law. Cause exists to cite respondent for violating this statutory requirement by reason of the facts set forth in Findings of Fact 1, 2, 4, 5, 11 and 12. The evidence demonstrates that it was more likely than not that Akeel Jassim Abood was a driver for, and therefore an employee of, respondent, and that respondent should have provided evidence of his workers' compensation coverage.

2. Public Utilities Code Section 5379 prohibits a charter-party carrier of passengers from conducting any operations as a carrier during the period of suspension of its permit. Cause exists for citing respondent for violating this statutory prohibition by reason of the facts set forth in Findings of Fact 1, 8 and 9. There is clear evidence that respondent operated for four days in April 2005 while its permit was suspended.

3. Public Utilities Code Section 5381, Commission General Order (GO) 157-D, part 5.02, and Vehicle Code Section 1808.1 require a charter-party carrier to enroll every driver in the DMV Pull Notice System. Cause exists to cite respondent for violating this requirement by reason of the facts set forth in Findings of Fact 1, 2 and 6, and Conclusion of Law 1.

4. Public Utilities Code Section 5374, subdivision (a)(2), and Commission GO 157-D, part 10, require a charter-party carrier to enroll every driver, and conduct

pre-employment testing of every driver, as part of a Controlled Substance and Alcohol Testing Certification Program. Cause exists to cite respondent for violating these requirements by reason of the facts set forth in Findings of Fact 1, 2 and 7, and Conclusion of Law 1.

5. Public Utilities Code Section 5381 and Commission GO 157-D, Part 3.02, prohibit a charter-party carrier from conducting operations on the property of an airport without authorization. Cause exists to cite respondent for violating this requirement by reason of the facts set forth in Findings of Fact 1, 2, and 10.

6. The violations set forth in Conclusions of Law 1 through 6 violate Conditions 3, 4 and 7 of permit number TCP017323-P.

7. In mitigation of the statutory and regulatory violations set forth above, there is no evidence that respondent's license has previously been disciplined. Additionally, Item 5 of Citation FC-015 is based upon two counts of violating the prohibition against operating on airport property without approval, i.e., violation of this prohibition at two airports. CPSD only made a showing that respondent violated this rule at OAK. In view of these circumstances, the fine should be reduced from $1,500.00 to $1,300.00.

Comments

This Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311, subdivision (g). Timely comments were received from CPSD and from respondent.[1]

CPSD's comments express concern about a statement in the first sentence of Conclusion of Law 7 that the absence of evidence of previous license discipline provides a basis for instigating the proposed penalty. CPSD asserts that it considered the absence of previous discipline when it established the amount of the fine, which CPSD characterizes as "relatively low." However, the record is devoid of evidence of its schedule of fines or an explanation of how it set the fine in this case. In fairness this information should be included in the record, so that a respondent is apprised of the basis for the fine it is assessed. We will afford respondent the benefit of the doubt in this instance, with the expectation that future respondents will receive an explanation of proposed fines so they may be in a position to test whether the amount is appropriate.

[1] Respondent's comments were filed by the Law Office of Steven H. Herman, which did not represent respondent at the time of the hearing.

In its comments respondent asserts that the entire Resolution is factually and legally flawed, and that respondent was denied due process of law. First, respondent notes that the information sheet served with the citation, explaining how to file an appeal, does not indicate that the appeal is a formal fact-finding process in which respondent could bring witnesses or present written testimony. Respondent argues that Abood consequently did not attend the hearing, and claims that if Abood had done so, he would have contradicted CPSD's testimony that he had identified himself as an employee of GGG. Second, respondent criticizes our conclusion that, on balance, other facts indicate that Abood was acting as an employee when he was driving respondent's vehicle at SFO.

The only new grounds for claiming that the Resolution is flawed are the facts that Abood holds his own TCP and thus would have no reason to be an employee of another limousine company, and the absence of testimony that Abood received any compensation from respondent. However, the weight of the credible evidence suggests that Abood was acting in the capacity of a driver for respondent, compensated or otherwise, when he was interviewed at SFO. He did not indicate that he had his own TCP or was acting under its authority. Whatever the informalities of his arrangement with respondent may have been, the requisite protections for the public were not in force.

Finally, respondent criticizes our reliance upon Abood's name being added to respondent's insurance coverage, and not subsequently being deleted, as a basis for finding that he was an employee of respondent. However, the letter in the record that indicates respondent asked its insurance broker to delete Abood does not indicate at what time that request was made. Coverage for Abood was carried over two years. The letter is dated October 26, 2005, after the investigation and just shortly before the hearing, so it is not helpful in pinpointing the date of the request. We are therefore unable to rely upon this letter as strong circumstantial evidence that Abood was not serving as a driver for respondent when he was interviewed by CPSD.

As is true of any administrative proceeding, respondent was presumed to know the nature of the evidence it could present. In this instance, respondent initially elected to represent itself through Rizk, one of its partners, and knowingly declined other representation (Transcript (Tr.), p. 5). The administrative law judge expressly advised respondent of its right to call witnesses on its behalf. (Id.) Nevertheless, respondent elected to proceed with the hearing and declined to call any witness but Rizk when offered the opportunity to do so. (Tr. 50.)

We will not disturb the conclusions reached in the administrative law judge's draft, which is based on the record. We note, however, that an application for rehearing of the final Resolution may be made in accordance with the Commission's Rules of Practice and Procedure within 30 days of the date of issuance.

A minor typographical error has been corrected in response to CPSD's comments, and a number of non-substantive editorial changes have been made for the sale of increased clarity.

IT IS THEREFORE RESOLVED that:

1. Citation FC-015 is affirmed except as provided herein.

2. Respondents George Rizk, Joseph Eid and Hashem Ahmad, dba GGG Limousine, shall pay a fine of $1,300.00 pursuant to Public Utilities Code Section 5378 within 30 days of the effective date of this order. Payment shall be made by check or money order 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 and this citation shall become final.

3. If respondent fails to pay the fine as provided herein, the Commission's Consumer Protection and Safety Division shall immediately revoke TCP017323-P, and may take any other action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 12, 2006, by approval of the following Commissioners:

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STEVE LARSON
Executive Director

MICHAEL R. PEEVEY

President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

Updated Service List
CPSD Citation Number FC-015

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