

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Resolution ALJ-335  
Administrative Law Judge Division  
January 19, 2017

**RESOLUTION**

RESOLUTION ALJ-335. Resolves the Appeal K.16-09-006 of Citation No. CPED FC-834 of J&I Transportation LLC, doing business as (dba) Apollo Shuttle VIP Transportation Services. (PSC 16363)

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**SUMMARY**

This resolution resolves the appeal of Citation No. CPED FC-834 issued to J&I Transportation LLC, doing business as (dba) Apollo Shuttle VIP Transportation Services (Apollo) by the California Public Utilities Commission's Consumer Protection and Enforcement Division<sup>1</sup> Citation No. CPED FC-834 issues a fine of \$4,000 for five violations (15 counts) of the Public Utilities Code and the Commission's General Orders 157-D and 158-A during the period of January 1, 2016 through May 9, 2016. The citation is sustained. Recovery of \$2,000 is suspended provided that Apollo does not receive any future violations in the next 36 months. The amount that is now due and payable is \$2,000.

**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, Consumer Protection and Enforcement Division (CPED) is authorized to issue citations to various classes of transportation carriers for violation of the Pub. Util. 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.<sup>2</sup>

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<sup>1</sup> The Transportation Enforcement Branch, which issued Citation FC-834, is no longer part of the Commission's Safety and Enforcement Division, but is instead part of the newly created Consumer Protection and Enforcement Division.

<sup>2</sup> The Commission issued Resolution ALJ-299 on June 26, 2014 for applications beginning January 1, 2015.

On August 18, 2016, CPED issued Citation FC-834 for violations of Public Utilities Code to J&I Transportation LLC (J&I) doing business as (dba) Apollo Shuttle VIP Transportation Services (Apollo). The underlying investigation covered the period of January 1, 2016, through May 9, 2016. The citation was issued for violations during this period as follows:

1. Operated as a charter-party carrier and/or a passenger stage corporation (PSC) during a period of suspension in violation of Pub. Util. Code §§ 5379 and 1045 [9 counts];
2. Engaging two employee-drivers without evidence of workers compensation insurance in effect and on file with the Commission in violation of Pub. Util. Code §§ 5378.1 and 460.7 [2 counts];
3. Failure to enroll one driver into the Department of Motor Vehicle's (DMV) Employer Pull Notice (EPN) Program in violation of Pub. Util. Code §§ 5374(a)(1)(D) and 1032(b)(1)(D); General Order (GO) 157-D and 158-A, Parts 5.02 and California Vehicle Code (CVC) § 1808.1. [1 count];
4. Failure to enroll two employee-drivers into a mandatory alcohol and controlled substance testing certification program for pre-employment and random drug testing in violation of Pub. Util. Code §§ 5374(a)(1)(I) and 1032.1 and GO 157-D and 158-A, Parts 10.02. [2 counts]; and
5. Failure to maintain and issue waybills containing information required by GO 157-D, Part 301. [1 count]

### **APPEAL**

Apollo filed a timely appeal of Citation FC-834 and the Commission granted the request for an appeal hearing. The appeal hearing was held on October 21, 2016. Apollo and CPED appeared as parties at the scheduled hearing. CPED offered into evidence the Confidential Compliance filing,<sup>3</sup> which included the following attachments<sup>4</sup>:

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<sup>3</sup> A public version of the Confidential Compliance filing was also filed in this proceeding.

<sup>4</sup> Prior to the start of the hearing, the attorney for CPED noted that the reproduced copies contained in Attachments 1 and 7 of the Confidential Compliance filing were difficult to read and moved to exchange them with clear copies. Apollo did not object to this request. Accordingly, the Administrative Law Judge (ALJ) granted CPED's request to exchange the readable copies of Attachments 1 and 7.

- Attachment 1: Division of Labor Standards Enforcement (DLSE) Penalty Assessment of \$9,000 and Notice of Findings, dated June 22, 2011
- Attachment 2: State Compensation Insurance Fund (SCIF) Notice of Cancellation effective May 24, 2012
- Attachment 3: CPUC Citation \$1,000 (Case Number (No.) PSG-3075, dated October 28, 2011
- Attachment 4: CPUC Notice of Impending Suspension, dated March 22, 2016
- Attachment 5: CPUC Order of Suspension, dated April 20, 2016
- Attachment 6: Cease and Desist and Records Review appointment letters dated April 26, 2016
- Attachment 7: Apollo's waybills and driver's reports
- Attachment 8: CPUC Workers' Compensation Declaration Form dated April 14, 2016
- Attachment 9: Allstate Insurance amended declarations dated May 11, 2016
- Attachment 10: Email to/from Allstate Agent and Mr. Abu Ghattas
- Attachment 11: Allstate Insurance amended declarations dated April 25, 2016
- Attachment 12: John Wayne Airport records from January 1, 2016 through May 10, 2016
- Attachment 13: LAX records from January 1, 2016 through May 9, 2016
- Attachment 14: Email to/from Mr. Abu Ghattas
- Attachment 15: SCIF Quote dated July 8, 2016
- Attachment 16: Email confirming SCIF policy dated July 18, 2016
- Attachment 17: Zurich Insurance records
- Attachment 18: Department of Motor Vehicle's (DMV) EPN records for requestor code T7110, dated April 27, 2016 and June 20, 2016
- Attachment 12: Central Drug System records

In addition, during the evidentiary hearing CPED also introduced:

- CPED 1: Statements of Information filed with the Secretary of State of the State of California on April 16, 2012 and January 12, 2015 and Limited Liability Company Articles of Organization for J&I Transportation, filed with the Secretary of State of the State of California on March 20, 2003.

CPED 2: Carrier Information for PSG0027827, Antonia Chaidez.

Safety and Enforcement Division moved to file Citation FC-834-C (a version of Citation FC-834 containing confidential information) under seal. The evidentiary record was submitted on October 21, 2016. With respect to the confidential material under seal, the Commission has granted similar requests for confidential treatment in the past and does so here. We agree the information involves personal information. We therefore authorize the confidential treatment of Citation FC-834-C as set forth in the Ordering Paragraphs of this resolution. The request to file under seal is granted until the Commission's final decision addressing this citation appeal is no longer subject to judicial review.

### **RESOLUTION OF THE APPEAL**

#### **Violation of Pub. Util. Code §§ 1045 and 5379**

Pub. Util. Code § 1045 states in part that, after the cancellation or revocation of a certificate, or during the period of its suspension, it is unlawful for a PSC to conduct any operations as a carrier.

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

Apollo's workers' compensation coverage with SCIF was cancelled effective May 24, 2012 (Attachment 2). On March 22, 2016, Apollo was advised that its PSC and Transportation Charter-Party (TCP) authorities would be suspended effective April 20, 2016, due to lack of workers' compensation insurance coverage (Attachment 4). On April 20, 2016, Apollo was sent an Order of Suspension advising that its PSC and TCP authorities were suspended effective April 20, 2016. (Attachment 5).

During the course of the investigation it was discovered that Apollo continued to operate and conducted at least nine days of operations as a charter-party carrier during the period of suspension from April 20, 2016 through May 10, 2016 (Attachments 7, 12, and 13).

At the hearing, Abu Ghattas, owner of Apollo, confirmed that he did continue to operate Apollo during the period of suspension. However, he contends that this was not a deliberate act, but truly a misunderstanding on his part for failing to completely understand the notices that were sent to him. By his own admission, Apollo shuttle

violated Pub. Util. Code §§ 1045 and 5379.

Violation of Pub. Util. Code §§ 460.7 and 5378.1

Pub. Util. Code §§ 460.7 and 5378.1 requires every charter-party carrier to have either a certificate of workers' compensation coverage for its employees or a certification of consent to self-insure issued by the Director of Industrial Relations.

During the course of the investigation it was discovered that Apollo had engaged the services of two employee-drivers without evidence of workers' compensation coverage (Attachments 7, 12, 13, and 14).

Apollo does not dispute that there were two drivers performing services during the period in question. Apollo confirmed that Mr. Ahmad Khamehdeifi drove on January 9, 2016 and Mr. Antonio Chaidez drove on six dates during the period of January 25, 2016 through April 20, 2016.

Apollo admits that it violated Pub. Util. Code §§ 1045 and 5378.1. However, Apollo contends that this was not a deliberate act. Apollo testified that Mr. Chaidez was an owner operator with Apollo and that Mr. Khamehdeifi was interested in becoming an owner-operator at Apollo, so he worked for one day to try it out.<sup>5</sup>

The evidence establishes that Apollo violated Pub. Util. Code §§ 1045 and 5378.1 by failing to have either a certificate of workers' compensation coverage for its employees or a certification of consent to self-insure issued by the Director of Industrial Relations.

Violation of Pub. Util. Code §§ 1032(b)(1)(D) and 5374(a)(1)(D)

Pub. Util. Code §§ 1032(b)(1)(D), 5374(a)(1)(D), GO 157-D, and 158-A, Parts 5.02 provides that every carrier shall enroll in the "Pull Notice Program" of the DMV.

CPED's investigation reveals that Apollo engaged the services of Mr. Khamehdeifi for at least one day without enrolling Mr. Khamehdeifi in the DMV EPN Program (Attachments 7, 12, 13, 14 and 18).

Apollo does not dispute this. Rather, Apollo contends that Mr. Khamehdeifi was not enrolled in the DMV EPN Program because Mr. Khamehdeifi was interested in becoming an owner-operator and, although he drove for one day, Mr. Khamehdeifi decided that it was not a fit for him because it would require long hours.

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<sup>5</sup> Although Apollo contends that Mr. Chaidez was an owner-operator at Apollo, records obtained by CPED from the State of California Secretary of State reveal that Mr. Chaidez was never listed as an owner in the Articles of Organization on file with the Secretary of State.

The evidence shows that Apollo violated Pub. Util. Code §§ 1032(b)(1)(D) and 5374(a)(1)(D) for failure to enroll Mr. Khamehdeifi in the DMV's EPN program. The importance of the EPN program cannot be overstated. It is one of the Commission's tools to promote driver safety through the ongoing review of driver records.

Violation of Pub. Util. Code §§ 1032.1 and 5374(a)(1)(I)

Pub. Util. Code §1032.1 provides that applicants for a certificate of public convenience and necessity must provide for a mandatory controlled substance and alcohol testing certification program.

Additionally, Pub. Util. Code § 5374(a)(1)(I) provides:

(a)(1) Before a permit or certificate is issued or renewed, the Commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services.

The Commission shall not issue or renew a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:

...  
(I) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the Commission pursuant to Section 1032.1.

Finally GO 157-D and 158-A, Parts 10.02 requires all charter-party carrier applicants (new and renewal) who propose to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, must provide for a mandatory controlled substance and alcohol testing certification.

As noted above, Mr. Chaidez worked at least six days for Apollo and Mr. Khamehdeifi worked at least one day. Neither of these individuals was enrolled in the alcohol/drug program.

Apollo does not dispute this violation. Rather, Apollo argues that Mr. Chaidez was an owner-operator and not an employee of Apollo. Apollo contends that Mr. Chaidez would have had his own alcohol/drug testing program. Additionally, Apollo states that Mr. Khamehdeifi was not an employee, but was interested in becoming an owner/operator at Apollo and performed services for only one day while he was trying out the business.

Based upon the admission of Apollo, there were two violations of Pub. Util. Code §§ 1032.1 and 5374(a)(1)(I).

GO 157-D, Part 301

Pursuant to GO 157-D, Part 301, every charter-party carrier requires certain information to be included on a waybill or trip report. Under GO 157-D, Part 3.01 the waybill shall include:

1. Name of carrier and Transportation Charter Party (TCP) number.
2. Vehicle license plate number.
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Whether the transportation was arranged by telephone or written contract.
7. Number of persons in the charter group.
8. Name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation.
9. Points of origination and destination.

During the course of the investigation and records review conducted on May 10, 2016, Investigator Steve Esguerra determined that Apollo's waybill failed to contain all of the information required by GO 157-D.

Apollo does not dispute that the waybills may have been completed incorrectly. However, Apollo contends that it was not a deliberate omission and that it was actually an oversight of Mr. Chaidez.

Assessment of Fine

In assessing the reasonableness of the \$4,000 fine, several factors must be considered. Decision (D.) 98-12-075 sets forth the criteria for determining the reasonableness of a fine. Specifically, it is important to consider the following: 1) the severity of the economic or physical harm resulting from the violation; 2) the conduct to prevent, detect, disclose, and rectify the violation; 3) the financial resources of the party involved; 4) the public interest involved; 5) the totality of the circumstances; and 6) Commission precedents.

As set forth in D.98-12-075, the Commission should evaluate the reasonableness of the \$4,000. Using this criteria, it is determined that although the public was placed at risk, there was no immediate economic or physical harm as a result of the violations.

It is also determined that although Apollo did not voluntarily disclose the violations, it did cooperate with CPED's investigation. Additionally, Apollo was candid at the hearing and agreed that it had engaged in activities that were in violation of Commission rules and guidelines. However, Apollo indicated that its actions were not a blatant disregard of the rules, rather a misunderstanding.

It should also be noted that the purpose of a penalty is not cause an entity to cease operations. Apollo testified that the business is frequently slow and worries that a fine of \$4,000 could prevent it from being able to continue operating in the future. Additionally, Apollo questioned CPED's witness as to how it was determined that the fine in this proceeding would be \$4,000. The witness was unable to substantiate how it was determined that \$4,000 would be the fine assessed.

As it relates to the public interest involved, the Commission notes that safety of the public is paramount. However, as stated above, the violations were remediated prior to any economic or physical harm occurring.

Considering the totality of the circumstance and the desire not to put a small company with limited resources out of business it is appropriate to consider suspending recovery of a portion of the penalty. Although it is appropriate to sustain the citation, it is also appropriate to suspend collection of a portion of the penalty assessment. Provided that Apollo does not receive any future citations within the next 36 months, collection of \$2,000 of the penalty is suspended.

Apollo is cautioned that in the future it must ensure that it is in compliance with all Commission rules, regulations and guidelines as any future violations could result in significant and substantial fines. Additionally, in the event that Apollo receives any future violations within the next 36 months from the date of this Resolution, the suspended amount of \$2,000 would become due and payable immediately.

### **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 in this case for failure to enroll in the DMV's EPN program, and the requirements for pre-employment and mandatory drug testing are intended to secure the safety of charter-party carrier passengers.

## COMMENTS

Pub. Util. Code § 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.

## ASSIGNMENT OF PROCEEDING

Gerald F. Kelly is the assigned ALJ for this citation appeal.

## FINDINGS

1. Apollo's PSC and TCP authorities were suspended effective April 20, 2016, for failure to have Workers' Compensation insurance.
2. Apollo's PSC and TCP authorities were reinstated on May 11, 2016.
3. Apollo operated as a charter-party carrier and/or PSC for at least a period of nine days from April 20, 2016 through May 10, 2016, while its PSC and TCP authorities were suspended.
4. Ahmad Khamehdeifi and Antonio Chaidez were employees of Apollo.
5. Apollo engaged the services of Ahmad Khamehdeifi and Antonio Chaidez for a total of seven days without Workers' Compensation insurance.
6. Apollo engaged the services of Ahmad Khamehdeifi for one day without enrolling the employee in the DMV's EPN program under Apollo's requestor code.
7. Ahmad Khamehdeifi was not enrolled in mandatory controlled substance and alcohol testing while working for Apollo on January 9, 2016.
8. Antonio Chaidez was not enrolled in mandatory controlled substance and alcohol testing while working for Apollo on six occasions between January 25, 2016 and April 20, 2016.
9. Apollo provided hard copies of waybills/contracts to Investigator Esguerra during the records review on May 10, 2016.
10. GO 157-D requires a waybill/contract to contain the following information: name of carrier, TCP number, vehicle license plate number, driver's name, name and address of person requesting or arranging the charter, time and date charter was arranged, whether the transportation was arranged by telephone or written contract, number of persons in the charter group, name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation and points of origination and destination.

11. The waybills/contracts provided to Investigator Esguerra did not contain all of the information required by GO 157-D.

**THEREFORE, IT IS ORDERED** that:

1. The violations in Citation FC-834 are affirmed.
2. The penalty in Citation FC-834 in the amount of \$4,000 is sustained.
3. Provided that J&I Transportation, doing business as (dba) Apollo Shuttle VIP Transportation Services does not receive any future violations in the next 36 months, collection of \$2,000 of the penalty is suspended.
4. If J&I Transportation, doing business as (dba) Apollo Shuttle VIP Transportation Services receives any future violations in the next 36 months, which are subsequently sustained, then the suspended fine of \$2,000 will immediately become due and payable.
5. J&I Transportation, doing business as (dba) Apollo Shuttle VIP Transportation Services must pay a penalty of \$2,000 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, San Francisco, California 94102. Apollo may request a payment plan from the Consumer Protection and Enforcement Division.
6. J&I Transportation, doing business as (dba) Apollo Shuttle VIP Transportation Services must either request a payment plan from the Consumer Protection and Enforcement Division or make 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 pursuant to Resolution ALJ-335."
7. The Consumer Protection and Enforcement Division's (CPED) motion to file FC-834-C under seal is granted until the Commission's final decision addressing citation appeal is no longer subject to judicial review. During this period, the information in the confidential portions of the FC-834-C shall not publically be disclosed except on further Commission order or Administrative Law Judge ruling. When the Commission's final decision addressing J&I Transportation, doing business as (dba) Apollo Shuttle VIP Transportation Services' citation appeal is no longer subject to judicial review, the Commission's Executive Director shall ensure that all copies of FC-834-C are returned to CPED or destroyed.
8. 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 January 19, 2017, the following Commissioners voting favorably thereon.

/s/ TIMOTHY J. SULLIVAN  
TIMOTHY J. SULLIVAN  
Executive Director

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners

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K.16-09-006 List

The Appeal of J&I Transportation LLC, doing business as Apollo Shuttle VIP Transportation  
Services from Citation No. CPED FC-834

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(End of Service List)