

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

Resolution ALJ-372  
Administrative Law Judge Division  
[Date]

**RESOLUTION**

RESOLUTION ALJ-372. Resolves the Appeal K.19-02-008 of Citation No. CPED F-5499 of Benjamin M. Starr (TCP-34394B)

---

**SUMMARY**

This resolution resolves the appeal of Citation No. CPED F-5499 issued to Benjamin M. Starr, an individual, by the California Public Utilities Commission's Consumer Protection and Enforcement Division. Citation No. CPED F-5499 issues a fine of \$10,000 for two violations, totaling 180 counts of the Public Utilities Code (Pub. Util.) and the Commission's General Order 115-G during the period of May 3, 2017, through October 3, 2017. The citation is sustained and the fine of \$10,000 is upheld.

**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>1</sup>

On November 27, 2017, CPED issued Citation F-5499 for violations of Public Utilities Code and General Order 115-G to Benjamin M. Starr (Starr), an individual. The underlying investigation covered the period of May 3, 2017, through October 3, 2017. The citation was issued for violations during this period as follows:

---

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

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 [90 counts]; and
2. Conducted 90 days of operation as a charter-party carrier without evidence of public liability and property damage (PLPD) insurance coverage in effect and on file with the Commission in violation of Pub. Util. Code § 5391 and General Order (GO) 115-G [90 counts].

### **APPEAL**

Starr filed a timely appeal of Citation F-5499 and the Commission granted the request for an appeal hearing. The appeal hearing was set for April 16, 2019 in San Diego, California. CPED appeared at the April 16, 2019 hearing. However, Starr failed to appear at the scheduled hearing.<sup>2</sup> A subsequent hearing was set for June 26, 2019, in Los Angeles, California. Starr and CPED appeared as parties at the subsequently scheduled hearing. CPED offered into evidence the Compliance filing, which included the following attachments:

- Attachment 1: Prior citation issued to Starr on June 26, 2018 (F-5454) issued on July 26, 2018<sup>3</sup>
- Attachment 2: Notice of Impending Suspension (dated May 3, 2017); Order of Suspension (dated May 3, 2017); Order of Revocation (effective August 1, 2017); Notice of Reinstatement (dated October 5, 2017); and Deficiency Letter #1 (dated November 17, 2017)
- Attachment 3: Cease and Desist Letter (dated August 25, 2017)
- Attachment 4: Request for Records (dated November 14, 2017 and June 4, 2018)

---

<sup>2</sup> The assigned Administrative Law Judge (ALJ) telephoned Starr on the day of the first scheduled hearing to inquire why Starr failed to appear. Several days later, Starr returned the ALJ's call, but was extremely argumentative as the ALJ was attempting to explain the procedural process of what would happen next in the proceeding. Eventually the ALJ advised Starr that the call would be terminated and that he would receive a letter via certified mail providing instructions to appear at a subsequent hearing. Starr did not accept service of the certified letter, but showed up at the second hearing, nonetheless.

<sup>3</sup> The prior citation was issued for Starr failing to provide access to records in violation of Pub. Util. §§ 5381 and 5389. At the June 26, 2019 hearing, Starr argued that the previous citation (F-5454) was resolved and that he did not understand why it was being included in the current citation. CPED stated that the prior citation was included to show prior enforcement actions that CPED initiated against Starr.

- Attachment 5: Request to Uber for Starr's waybills
- Attachment 6: Examples of 13 electronic waybills received from Uber showing Starr operated as either Uber XL or Uber Black during the period of the investigation
- Attachment 7: Notice of Impending Suspension (dated April 4, 2017)
- Attachment 8: Insurance Policy History

On June 28, 2019, Starr submitted by e-mail copies of his auto insurance and personal umbrella policy with Farmers Insurance.<sup>4</sup>

### **RESOLUTION OF THE APPEAL**

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

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.

On April 4, 2017 a notice of impending suspension was mailed to Starr (Attachment 1).<sup>5</sup> The notice advised Starr that effective May 3, 2017, his charter Party "B" certificate would be suspended for failure to file evidence of public liability and property damage insurance (PLPD). On May 3, 2017, an order of suspension was sent to Starr (Attachment 1). The order of suspension advised Starr that his operating authority was suspended effective May 3, 2017 for failing to maintain adequate insurance coverage. In an undated letter, Starr was notified that his operating authority was revoked effective August 1, 2017 for failing to maintain adequate insurance.<sup>6</sup> CPED sent Starr a cease and desist letter on August 25, 2017, due to Starr's continued operation as a charter-party carrier after the permit was suspended and revoked.<sup>7</sup>

Starr refused to be sworn in at the hearing. However, he stated that he had adequate

---

<sup>4</sup> Typically, the record in citation appeals matters closes at the conclusion of the hearing. However, the ALJ granted Starr permission to submit the additional documents.

<sup>5</sup> Unless stated otherwise, all references to Attachments refer to CPED's Compliance Filing.

<sup>6</sup> Each of these notices advised Starr of the potential consequences for continuing operation after the suspension or revocation of his operating authority.

<sup>7</sup> CPED contends that they also sent Starr another cease and desist letter on September 13, 2017. However, this cease and desist letter was not included in CPED's compliance filing.

insurance and that the Commission's electronic system would not let him, nor the insurance company submit verification of insurance. The assigned ALJ questioned Starr as to whether he operated as an Uber SUV or Uber Black during the period in question without adequate insurance.<sup>8</sup> Starr responded that he provided all the necessary information and that if you [the ALJ] look at the record you [the ALJ] would see the answer to the question just asked.

CPED's witness testified that CPED received approximately 400 pages of electronic waybills conducted by Starr during the period of May 3, 2017 through October 3, 2017. The witness testified that he looked at all 400 pages submitted by Uber and determined that Starr conducted 297 trips as an Uber Black or Uber SUV for a period of 92 days.

Based upon the evidence provided by Uber (Attachments 5 and 6) and the testimony of CPED's witness it is concluded that Starr operated as a charter-party carrier and/or a passenger stage corporation during a period of suspension in violation of Pub. Util. Code § 5379.

#### Violation of Pub. Util. Code § 5391 and GO 115-G

Pub. Util. Code § 5379 and GO 115-G provides in part that, a charter-party carrier shall not operate without evidence of public liability and property damage insurance in effect and on file with the Commission. On April 4, 2017, the Commission received notice that Starr's liability insurance policy #1516010833343 would be canceled effective May 3, 2017 (Attachment 7). On September 29, 2017, new policy #CAOL023535 was filed online by National Casualty Company with an effective date of September 7, 2017. The insurance policy was canceled on September 7, 2018 (Attachment 8).

CPED's witness testified that Starr operated as both an Uber Black and Uber SUV without proper liability insurance during the period of May 3, 2017 through September 28, 2017 (see also, Table 1 at page 3 of CPED's Compliance filing and Attachment 6).

Starr contends that he had insurance. Also, he stated that no one was hurt by his actions during the period in question and that Uber has an insurance policy that would have provided coverage if an Uber driver failed to have adequate insurance and someone is injured.

---

<sup>8</sup> Since any carrier that operates during a period of suspension or after revocation is guilty of a misdemeanor which can be punishable by fine or imprisonment, the ALJ advised Starr of his Fifth Amendment right against self-incrimination. Starr eventually exercised his Fifth Amendment right and stopped testifying.

The Commission is required to establish basic consumer protection polices in order to promote the safety of passengers, drivers and the general public. The Commission has previously stated that except for Uber X drivers, all other Uber drivers should either be licensed Transportation Charter Party drivers with an active permit from this Commission or licensed taxi drivers with an active permit from the relevant taxi licensing authority.<sup>9</sup> The Commission went on to further state that Uber Black or Uber SUV are all and should be licensed professional drivers required to carry commercial insurance of at least \$750,000 (*see*, Decision (D.) 14-11-043 at 11).

From the limited testimony provided by Starr, the assigned ALJ was able to determine from the documents that Starr later provided that Starr had a personal auto policy with Farmers Insurance (#18843-72-29) and an umbrella policy (#60551-78-23) in the amount of \$1,000,000. The term of the auto policy was for March 20, 2017 through September 20, 2017. The term of the umbrella policy was from March 20, 2017 through March 20, 2018.

Although Starr had a personal policy, he did not have the required commercial insurance policy as set forth in D.14-11-043. The personal policy may have met the insurance requirements as an Uber X driver. However, every time that Starr engaged in services for Uber as an Uber Black or Uber SUV, he was required to have a commercial liability policy. Starr did not have the required commercial liability policy and therefore violated Pub. Util. Code § 5379 and GO 115-G while operating as an Uber Black or Uber SUV during the period in question.<sup>10</sup>

#### Assessment of Fine

In assessing the reasonableness of the \$10,000 fine, several factors must be considered. 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 \$10,000 fine. Although Starr was fortunate enough not to have injured anyone during the period in question, serious harm could have resulted if he did. Additionally, the

---

<sup>9</sup> *See*, D.14-11-043 Ordering Paragraph 9.

<sup>10</sup> Waybill records received from Uber show that Starr conducted 297 charter-party carrier trips under Uber Black and Uber SUV without proper insurance. The waybills show that Starr's gross income from charter-party trips while his authority was suspended/revoked was \$11,619.25. (*See*, Table 1 of CPED's Compliance Filing at 3.)

fact that he was carrying a personal liability policy rather than a commercial liability insurance plan could have resulted in the insurer denying coverage if anyone was injured.

Additionally, at no point did Starr seem remorseful for his actions. Rather, he simply stated that even if he did not have insurance, Uber is required to carry a liability policy that would have covered any damages or injuries. This coupled with his combative attitude toward the assigned ALJ and CPED witnesses; along with his previous refusal to provide requested information to CPED, which resulted in a prior citation being issued; the fact that he received multiple notices from CPED informing him of the suspension/revocation of his operating permit along with the potential consequences for continued operation; and the fact he made 297 charter-party carrier trips and earned over \$11,000 all support a conclusion that the fine assessed of \$10,000 is reasonable.

### **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 maintain adequate liability insurance and continuing to operate as a as a charter-party carrier following suspension/revocation of his operating authority 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.<sup>11</sup>

### **ASSIGNMENT OF PROCEEDING**

Gerald F. Kelly is the assigned Administrative Law Judge for this citation appeal.

### **FINDINGS OF FACT**

1. Starr continued operating as a charter-party carrier after suspension and revocation of its operating authority in violation of Pub. Util. Code § 5379.

---

<sup>11</sup> Parties are advised that they may serve comments on this Resolution to the service list. They should not file comments with the Commission's Docket Office.

2. Starr conducted 90 days of operations as a charter-party carrier without evidence of PLPD insurance coverage in effect and on file with the Commission in violation Pub. Util. Code § 5379 and G.O. 115-G.
3. Starr did not fully cooperate with this investigation.
4. Starr did not have the appropriate commercial liability policy in effect during the period of May 3, 2017 through October 3, 2017.
5. Starr previously was cited by CPED for failing to provide requested documentation.

**THEREFORE, IT IS ORDERED** that:

1. The violations in Citation F-5499 are affirmed.
2. The penalty in Citation F-5499 in the amount of \$10,000 is sustained.
3. Benjamin M. Starr, an individual must pay a penalty of \$10,000 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. Benjamin M. Starr may request a payment plan from the Consumer Protection and Enforcement Division.
4. Benjamin M. Starr, an individual 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-372."
5. 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 \_\_\_\_\_, the following Commissioners voting favorably thereon:

---

ALICE STEBBINS  
Executive Director