
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

February 18, 2021

Agenda ID #19220

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-401:

This is the draft Resolution of Administrative Law Judge (ALJ) Jason Jungreis Resolving Citation Appeal K2010014 and dismissing the penalty assessed against Mohammedzeyn Adgo dba All Point Limo, pursuant to Citation F-5708 issued by the Consumer Protection and Enforcement Division. It will appear on the Commission's agenda no sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

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 must serve your comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution is noticed in the Commission's Daily Calendar, <http://docs.cpuc.ca.gov/SearchRes.aspx?DocTypeID=9&Latest=1>, as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served via electronic mail upon all persons on the attached service list.

Comments must be served to ALJ Jason Jungreis at jsj@cpuc.ca.gov. No paper copies are required at this time.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-401
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-401. Resolving Citation Appeal K2010014 and dismissing the penalty assessed against Mohammedzeyn Adgo dba All Point Limo, pursuant to Citation F-5708 issued by the Consumer Protection and Enforcement Division.

SUMMARY

On September 9, 2020, the California Public Utilities Commission's (Commission) Consumer Protection and Enforcement Division (CPED) issued Citation F-5708 (Citation) to Mohammedzeyn Adgo dba All Point Limo (Mr. Adgo). The Citation charged Mr. Adgo with statutory violations by operating as a charter-party carrier without evidence of insurance coverage in effect and on file with the Commission and by operating as a charter-party carrier after suspension of Commission authority. CPED assessed a \$2000 penalty for the Citation's violations.

We determine that Mr. Adgo had a reasonable good-faith belief that he had insurance in place at the time of the violations, and that he did not have notice that his operating authority had been suspended nor that his insurance was not in effect at the time of the violations. Therefore, the Citation is dismissed in full.

PROCEDURAL HISTORY

On September 9, 2020, CPED issued Citation F-5708, charging Mr. Adgo with violation of Public Utilities (Pub. Util.) Code Section 5379 for operating as a charter-party carrier after suspension of authority, and with violation of Pub. Util. Code Section 5381, 5391, and General Order (G.O.) 115-F for operating as a charter-party carrier without evidence of Public Liability and Property Damage (PL&PD) Insurance coverage in effect and on file with the Commission. The CPED Citation was based upon a citation written on November 6, 2019, by the San Francisco Airport Commission. The Citation penalty was eventually assessed at a total of \$2,000.

On October 27, 2020, Mr. Adgo timely filed a Notice Of Appeal, attaching documents which he asserted demonstrated that he was informed and reasonably believed that he had insurance in place at the time of the violations. On December 1, 2020, CPED filed its Compliance Filing, providing a series of exhibits, including the complete records regarding the Citation and CPED's efforts pursuant to the Citation.

On January 13, 2021, an evidentiary hearing was conducted telephonically. CPED Investigator Eric Ow, who prepared the CPED Citation and the CPED Compliance Filing, appeared at the hearing representing CPED. Mr. Adgo appeared at the hearing representing himself. Testimony was heard, and documents submitted with the Notice of Appeal and with the Compliance Filing were reviewed. This Resolution is a result of the evidentiary hearing, as well as the review of the submitted documents and the law.

FACTURAL HISTORY

CPED's Compliance Filing contains a narrative. The narrative reflects that on November 6, 2019, Mr. Adgo's vehicle was seen at San Francisco Airport (SFO).¹ An Airport Commission Ground Transportation Investigator wrote a SFO citation regarding Mr. Adgo's failure to have insurance in place on that date. However, as Inspector Ow testified, the SFO citation was not delivered to Mr. Adgo at the time of its writing.

CPED's Compliance Filing indicates that Mr. Adgo's insurance was suspended on November 2, 2019, and reinstated on November 22, 2019. The Compliance Filing contained an Order Of Suspension letter, dated November 4, 2019. Inspector Ow confirmed that this letter was mailed on November 4, 2019, and that it was the only means by which Mr. Adgo was informed that both his authority to operate and his insurance were suspended.

In explanation of numerous log entries found in the Compliance Filing Exhibits, Inspector Ow testified that he made repeated efforts to meet with Mr. Adgo regarding this matter. However, Mr. Adgo was out of the country for several months, and that period was extended due to Covid travel restrictions. This series of events helps explain why CPED did not issue the Citation closer in time to when the November 6, 2019, SFO citation was written.

The Compliance Filing contains as separate Exhibits two versions of Citation F-5708, both dated September 9, 2020, both prepared and signed by Inspector Ow, and identical in form and similar in content. However, one Citation version is for two violations (as

¹ The Compliance Filing narrative report date refers to the San Francisco Airport event as taking place on "November 16," but Ow corrected the date in his testimony, and the November 6 date matched that found on the original handwritten SFO citation (an Exhibit to the Compliance Filing).

identified here) but with 12 counts of each and totaled a fine of \$2,000, and the other Citation version added a third form of violation and totaled a fine of \$4,000. At the hearing, Inspector Ow testified that the correct understanding of Citation F-5708 is for a single violation of Pub. Util. Code Section 5379 for operating as a charter-party carrier after suspension of authority, and a single violation of Pub. Util. Code Section 5381, 5391, and G.O. 115-F, for operating as a charter-party carrier without evidence of PL&PD Insurance coverage in effect and on file with the Commission, for a total fine of \$2,000.

Mr. Adgo testified that he had been an operator of carrier vehicles since 2007, primarily driving for SuperShuttle, a commercial carrier transporting passengers in and out of Bay Area airports. He obtained his insurance through SuperShuttle. There was no suggested history nor testimony that Mr. Adgo had any prior issues regarding any aspect of his work, including regarding insurance.

Mr. Adgo's Notice of Appeal included a September 25, 2019, letter from SuperShuttle informing him in part as follows: "Currently, you have [commercial auto] insurance policies through SuperShuttle San Francisco, Inc., and our insurance carrier, which insurance policies are both scheduled to expire December 31, 2019." The Notice of Appeal also included a dated SuperShuttle Franchisee Receipt document indicating that SuperShuttle had debited monies from Mr. Adgo's receipts for the first week of November 2019 to be applied for the cost of commercial auto insurance.

Mr. Adgo testified that he did not receive any form of notification that his insurance had been suspended until after November 6, 2019, the date on which the SFO citation was written. His testimony as to his understanding that he had insurance in effect on that date was corroborated through direct and testimonial review of the SuperShuttle letter and the SuperShuttle Franchisee Receipt. The cross-examination regarding his testimony and those documents did not alter or cast doubt on his testimony. Mr. Adgo obtained new insurance shortly after learning that the insurance he had been relying upon was no longer in effect.

Inspector Ow acknowledged that Mr. Adgo might not have had notice of the suspended insurance. Asked whether the Citation requires that the recipient have notice of the suspension of insurance, or alternately stated, whether the violation was essentially absolute and the Citation enforceable regardless of a reasonable good-faith belief that insurance was fully in force, Inspector Ow deferred to the Airport Commission Investigator who wrote the SFO citation and did not opine as to its enforceability in this instance.

APPLICABLE LAW, RESOLUTIONS, AND DECISIONS

The Citation is pursuant to Pub. Util. Code Sections 5379, 5381, and 5391, and G.O. 115-F.

Pub. Util. Code Section 5379 reads in full as follows:

After the cancellation or revocation of a permit or certificate, or during the period of its suspension, or 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. The commission may either grant or deny an application for a new permit or certificate whenever it appears that a prior permit or certificate of the applicant has been canceled or revoked pursuant to Section 5378 or whenever it appears, after hearing, that as a prior permit or certificate holder, the applicant engaged in any of the unlawful activities set forth in Section 5378 for which his or her permit or certificate might have been canceled or revoked.

Pub. Util. Code Section 5381 reads in full as follows:

To the extent that such is not inconsistent with the provisions of this chapter, the commission may supervise and regulate every charter-party carrier of passengers in the State and may do all things, whether specifically designated in this part, or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Pub. Util. Code Section 5391 reads in full as follows:

The commission shall, in granting permits or a certificate pursuant to this chapter, require the charter-party carrier of passengers to procure, and to continue in effect during the life of the permit or certificate, adequate protection against liability imposed by law upon the charter-party carrier of passengers for the payment of damages for personal bodily injuries, including death resulting therefrom, protection against a total liability of the charter-party carrier of passengers on account of bodily injuries to, or death of, more than one person as a result of any one accident, and protection against damage or destruction of property. The minimum requirements for such assurances of protection against liability shall not be less than the requirements which are applicable to operations conducted under certificates of public convenience and necessity issued pursuant to the provisions of Article 2 (commencing with Section 1031), Chapter 5, Part 1, Division 1, of this code, and the rules and regulations prescribed pursuant thereto shall apply to charter-party carriers of passengers.

G.O. 115-F reads in pertinent part as follows:

(3) The certificate of insurance or bond evidencing such protection hereinabove required shall not be cancelable on less than thirty days' written notice to the Public Utilities Commission, such notice to commence to run from the date the notice is actually received at the office of the Commission.

The Citation Appeals process is established and governed by Resolution ALJ-377. Pursuant to that Resolution, Appendix A, in an expedited citation appeal hearing such as in this proceeding, parties represent themselves without lawyers; there is no need for further exchanges of information between the parties; and, there will be no court reporter or transcript of the hearing. The Commission division (here, CPED) has the burden of proof by a preponderance of the evidence and, because of this, opens and closes the hearing. The appellant (here, Mr. Adgo) has the burden of proof regarding any raised affirmative defenses.

ANALYSIS OF EVIDENCE IN LIGHT OF REGULATORY REQUIREMENTS

1. Review of Citation F-5708's charge of violation of Pub. Util. Code Section 5381, 5391, and G.O. 115-F for operating as a charter-party carrier without evidence of PL&PD Insurance coverage in effect and on file with the Commission.

CPED's documentation demonstrated that Mr. Adgo's insurance was suspended on November 2, 2019. CPED's documentation demonstrated that on November 4, 2019, a letter was mailed to Mr. Adgo notifying him that his insurance had been suspended. CPED's documentation demonstrated that on the afternoon of November 6, 2019, an SFO citation was written by a San Francisco Airport Ground Transportation Investigator regarding Mr. Adgo's failure to have insurance in place on that date.

CPED did not demonstrate that the suspension of his insurance was based upon any action or failure to act on Mr. Adgo's part. CPED did not demonstrate that Mr. Adgo was on notice of the suspension of insurance at the time that the November 6, 2019, SFO citation was written.²

Mr. Adgo credibly testified that he was not aware of the suspension of his insurance at the time that the SFO citation was written. Mr. Adgo's documentation supported his testimony that he had been informed that his insurance was in place and that he was paying for the insurance at the time of the issuance of the SFO citation, and that he therefore had a reasonable basis for a good-faith belief that his insurance was in effect on the afternoon of November 6, 2019. CPED's documents demonstrated that Mr. Adgo

² The SFO citation is the basis for the CPED Citation for violation of Pub. Util. Code Section 5381, 5391, and G.O. 115-F.

obtained new insurance shortly after being put on notice that the insurance he had had was suspended.

We find that Mr. Adgo was not aware that his insurance was suspended at the time that the SFO citation was written. Further, we find that Mr. Adgo reasonably believed that he had insurance based on documentation that insurance was in place through December 2019 and that he was paying for the insurance at the time the SFO citation was issued.

2. Review of Citation F-5708's charge of violation of Pub. Util. Code Section 5379 for operating as a charter-party carrier after suspension of authority.

As discussed above, CPED's documentation demonstrated that on November 4, 2019, a letter was mailed to Mr. Adgo notifying him that his authority to operate had been suspended because his insurance had been suspended.

CPED did not demonstrate that the suspension of authority was based upon any action or failure to act on Mr. Adgo's part. CPED further did not demonstrate that Mr. Adgo was on notice of the suspension of authority at the time that the November 6, 2019, SFO citation was written.³

Mr. Adgo credibly testified that he was not aware of the suspension of authority at the time that the SFO citation was written. Mr. Adgo's documentation supported his testimony that he had been informed that his insurance was in place and that he was paying for the insurance at the time of the issuance of the SFO citation, and that he therefore had a reasonable basis for a good-faith belief that his insurance was in effect on the afternoon of November 6, 2019. CPED's documents demonstrated that Mr. Adgo obtained new insurance shortly after being put on notice that the insurance he had had was suspended.

We find that Mr. Adgo was not aware of the suspension of authority at the time that the SFO citation was written. Further, we find that Mr. Adgo reasonably believed that he had insurance based on documentation that insurance was in place through December 2019 and that he was paying for the insurance at the time the SFO citation was issued.

We conclude that Mr. Adgo had a reasonable good-faith basis of belief that his insurance was fully in force on the date and time the SFO citation was generated, and that there must be notice of suspension of authority for a violation to stand for operating during a suspension of authority.

³ The SFO citation is the basis for the CPED Citation for violation of Pub. Util. Code Section 5379.

Therefore, this Resolution dismisses both violations found in the CPED Citation as well as the Citation's \$2,000 penalty.

COMMENTS

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

FINDINGS OF FACT

1. Citation F-5708 is for a single violation of Pub. Util. Code Section 5379 for operating as a charter-party carrier after suspension of authority, and a single violation of Pub. Util. Code Section 5381, 5391, and G.O. 115-F for operating as a charter-party carrier without evidence of Public Liability and PL&PD Insurance coverage in effect and on file with the Commission, for a total fine of \$2,000.
2. A San Francisco Airport Commission Ground Transportation Investigator wrote a citation on November 6, 2019, but that SFO citation was not delivered to Mr. Adgo.
3. On September 9, 2020, CPED issued Citation F-5708 based upon the November 6, 2019 SFO citation.
4. The Commission's Order Of Suspension letter was the only means by which Mr. Adgo was informed that both his insurance and operating authority were suspended, and that letter was mailed on November 4, 2019.
5. A September 25, 2019, letter from SuperShuttle confirmed that Mr. Adgo's insurance would be in place through December 31, 2019.
6. The SuperShuttle Franchisee Receipt document showed that SuperShuttle had debited monies from his receipts for the first week of November 2019 to pay for the cost of commercial auto insurance.

CONCLUSIONS OF LAW

1. A citation for suspension of authority is subject to an affirmative defense if the citation recipient had a reasonable good-faith belief that he had insurance in place at the time of the citation.
2. A citation for suspension of insurance is subject to an affirmative defense if the citation recipient had a reasonable good-faith belief that he had insurance in place at the time of the citation.
3. G.O. 115-F stands in support of a conclusion of law that a citation for suspension of authority should only be affirmed if the citation recipient had a reasonable means of notice that his insurance was suspended.

4. G.O. 115-F stands in support of a conclusion of law that a citation for suspension of insurance should only be affirmed if the citation recipient had a reasonable means of notice that his insurance was suspended.
5. Under the factual circumstances in this proceeding in accordance with the application of the law, the Citation should be dismissed.

THEREFORE, IT IS RESOLVED that:

1. Citation F-5708 is dismissed.
2. The appeal process for this Citation is closed.
3. 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 _____, 2021, the following Commissioners voting favorably thereon:

RACHEL PETERSON
Executive Director

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RESOLUTION ALJ-401. Resolving Citation Appeal K2010014 and dismissing the penalty assessed against Mohammedzeyn Adgo dba All Point Limo, pursuant to Citation F-5708 issued by the Consumer Protection and Enforcement Division.

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for K.20-10-014.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

Dated February 18, 2021, at San Francisco, California.

_____/s/ SHANE GUTTO
Shane Gutto

N O T I C E

Persons should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

***** SERVICE LIST *****

Last Updated on 18-FEB-2021 by: KB3
K2010014 LIST

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