
PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

November 21, 2022

Agenda ID #21182

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-428:

This is the draft Resolution of Administrative Law Judge Peter Wercinski resolving K.22-06-007. It will not appear on the Commission's agenda 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 may serve comments on the draft resolution. Comments shall be served (but not filed) within 20 days of the date that the draft Resolution was mailed and published on the Commission's website [link], as provided in Rule 14.5 of the Commission's Rules of Practice and Procedure. Comments shall be served upon all persons on this proceeding's service list and on Assistant Chief ALJ Wercinski at PWI@cpuc.ca.gov.

/s/ MICHELLE COOKE

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:sgu

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-428
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-428. Resolves the Appeal K.22-06-007 of Citation No. T.22.04-002 by Amore Limousine Service Inc.

SUMMARY

This resolution resolves the appeal of Citation No. T.22.04-002 (Citation) issued to Amore Limousine Service Inc. (Amore) by the California Public Utilities Commission's Consumer Protection and Enforcement Division. The Citation imposes a \$4,000 penalty on Amore for five violations. The appeal is dismissed and the Citation and penalty of \$4,000 are affirmed because the testimony and documents admitted at the September 29, 2022 hearing establish by a preponderance of the evidence each of the five violations set forth in the Citation and the penalty amount. This proceeding is closed.

BACKGROUND

Amore Limousine Service Inc. (Amore) and its predecessor legal entities have operated as a charter-party carrier pursuant to authorization from the California Public Utilities Commission (Commission) since 1998. On March 23, 2020, the Commission issued a Notice of Suspension to Amore for its failure to maintain adequate insurance. On March 24, 2020, the Commission issued a Notice of Voluntary Suspension of Operating Authority to Amore beginning March 23, 2020 that required Amore to cease operations. After the suspension of its operating authority, Amore continued to identify itself as a limousine service on Facebook and Yelp.

On December 18, 2021 when Amore's operating authority as a charter-party carrier continued to be suspended, Amore's Chief Executive Officer (CEO) drove several passengers in an Amore 11-passenger limousine to a winery in Calistoga. The CEO was dressed in black pants and a white shirt, attire typical of a hired driver, and had a California Class C non-commercial driver's license but no commercial driver's license

or commercial endorsement. The CEO did not have any interaction with the limousine's passengers as they exited the limousine. The winery required advance reservations for visitors to enter the winery property. However, no winery reservations in the name of Amore's CEO or her daughter were made for December 18, 2021.

Amore's maintenance facility and the limousine driven by Amore's CEO had not been inspected by the California Highway Patrol (CHP) at any time in the 13 months before December 18, 2021. On December 18, 2021, Amore did not have any liability protection covering the limousine; Amore's CEO had a personal liability insurance policy covering the limousine with bodily injury liability limits of \$15,000 per person and \$30,000 per accident and property damage liability limits of \$5,000 per accident.

On April 5, 2022, the Commission's Consumer Protection and Enforcement Division (CPED) issued Citation T.22-04-002 (Citation) to Amore for five violations: (1) operation as a charter-party carrier after suspension of Amore's operating authority; (2) operation of a vehicle without providing adequate protection against liability in an amount not less than \$1,500,000; (3) operation of a bus without a CHP inspection; (4) engagement of a driver without being licensed with the proper endorsement; and (5) advertisement as a charter-party carrier without valid authority. The Citation directs Amore to pay a penalty of \$4,000 or file an appeal.

On June 20, 2022, Amore filed a Notice of Appeal (Appeal). In the Appeal, Amore's CEO states that she was taking her daughter wine tasting with her daughter's friends, acknowledged that she had personal insurance but no commercial insurance on the limousine, and asserted that she was driving a modified limousine and not a bus. On July 11, 2022, CPED filed a motion for leave to file its confidential Compliance Filing under seal.

On September 29, 2022, the assigned Administrative Law Judge conducted an evidentiary hearing. Amore and CPED appeared at the evidentiary hearing and presented testimony. Exhibits CPED-1 through CPED-19 were admitted into evidence at the evidentiary hearing.

DISCUSSION

1. Burden of Proof

In this proceeding, CPED has the burden of proof by a preponderance of the evidence.¹

¹ Resolution ALJ-377 Rule 11.

2. Operation as Charter-Party Carrier after Suspension of Operating Authority

A charter-party carrier of passengers is a person engaged in the transportation of persons by motor vehicle for compensation over any public highway in California.² It is unlawful for a charter-party carrier to conduct any operations as a carrier during a period of suspension of an operating permit or certificate issued by the Commission.³ The Commission may levy a civil penalty of up to \$7,500 upon the holder of an operating permit or certificate for any violation of the statutory provisions applicable to charter-party carriers.⁴

It was not disputed at the evidentiary hearing that the Commission had suspended Amore's operating authority effective March 23, 2020 and continuing through December 18, 2021. CPED contends that the evidence reflects that Amore was conducting charter-party carrier operations on December 18, 2021; Amore contends that it was only providing an uncompensated limousine ride as a belated birthday gift for the CEO's daughter and her friends. The CPED witnesses testified credibly that the CEO who drove the limousine on December 18, 2021 was dressed in professional attire typical of the clothes that a limousine driver for hire would wear. In contrast, Amore's CEO testified uncertainly regarding her attire, stating initially that she could have been wearing jeans but later acknowledging that she could have been wearing clothes with a more professional look.

The CPED witnesses who observed the CEO in front of the winery also testified credibly that they did not see any interaction between the CEO and the limousine's passengers as they exited the vehicle and that some interaction would have been normal if in fact Amore's CEO was providing an uncompensated limousine ride for her daughter to go to a birthday celebration at the winery with friends. In addition, the CPED witnesses testified credibly that the winery requires reservations for any visitor to enter the property and that the winery had no reservations on December 18, 2021 under the name of either Amore's CEO or the CEO's daughter. Amore's CEO testified that the winery did require reservations by name but did not have a clear explanation for the reason there was no reservation in either her name or her daughter's name, speculating that the reservation may have been under the name of one of her daughter's friends who attended the event. The CEO's daughter did not testify at the hearing, and Amore did not present any documentation at the evidentiary hearing regarding the name on the reservation and a connection to the CEO or her daughter.

² Public Utility (Pub. Util.) Code Section 5360.

³ Pub. Util. Code Section 5379.

⁴ Pub. Util. Code Section 5378(b).

The testimony of the CPED witnesses was more persuasive and credible than the testimony of Amore's CEO regarding the events of December 18, 2021 relevant to whether Amore was conducting compensated charter-party carrier operations on that day. The evidence established that Amore violated Pub. Util. Code Section 5379 by engaging in charter-party carrier operations for compensation on December 18, 2021 when its operating authority was suspended.

3. Operation of Vehicle without Adequate Liability Protection

The Commission shall require a charter-party carrier to procure and continue in effect during the life of the operating permit or certificate adequate protection against liability imposed by law upon the charter-party carrier.⁵ For any vehicle with a seating capacity of eight through 15 passengers, a charter-party carrier shall have minimum liability protection coverage of \$1,500,000 for bodily injury and property damage.⁶

Amore had cancelled its public liability insurance policy in March 2020 and did not have liability protection in effect on December 18, 2021. Amore's CEO had a personal liability insurance policy covering the limousine in effect on December 18, 2021, but that policy's bodily injury liability limits of \$15,000 per person and \$30,000 per accident and property damage liability limits of \$5,000 per accident did not meet the minimum limits of \$1,500,000 required under General Order (GO) 155-G(1). Therefore, Amore violated Pub. Util. Code Section 5391 and GO 155-G(1) by not maintaining adequate liability protection while performing charter-party carrier operations on December 18, 2021.

4. Operation of a Bus without CHP Inspection

All vehicles operated by charter-party carriers shall comply with the requirements of the CHP and the Motor Carrier Safety sections of Title 13 of the California Code of Regulations.⁷ It is unlawful to operate a bus without a CHP inspection of the maintenance facility of the entity operating the bus at least once every 13 months.⁸ A bus is a vehicle designed, used, or maintained for carrying more than 10 persons, including the driver, which is used to transport persons for compensation.⁹

⁵ Pub. Util. Code Section 5391.

⁶ GO 155-G(1).

⁷ GO 157-E Section 4.02.

⁸ California Vehicle (Cal. Veh.) Code Section 34501(c), (e).

⁹ Pub. Util. Code Section 5359(b).

The CPED witnesses testified credibly that the limousine in use on December 18, 2021 met the definition of a bus and that the required CHP inspection had not been performed. The testimony of Amore's CEO reflected that no CHP inspection had been performed from the suspension of Amore's operating authority in March 2020 through December 18, 2021. The CEO testified that the limousine in use on December 18, 2021 had a seating capacity of 10, was a modified limousine,¹⁰ and did not fall within the definition of a bus. However, Amore's June 29, 2019 Passenger Carrier Equipment Statement (Equipment Statement) signed by the CEO states that the limousine seats 11. Amore's CEO certified that the information in the Equipment Statement was accurate.¹¹ Based upon the testimony of the CPED witnesses and the CEO's certification, the limousine meets the definition of a bus, and the required CHP inspection was not performed. Therefore, the evidence established Amore's violation of operating a bus without the required CHP inspection.

5. Driver Not Properly Licensed

Every driver of a charter-party vehicle shall be licensed as required under the California Vehicle Code.¹² A person shall not operate a commercial motor vehicle unless that person has a valid commercial driver's license of the appropriate class.¹³ In addition, a driver is required to obtain an endorsement issued by the Department of Motor Vehicles to operate any commercial motor vehicle that is a passenger transportation vehicle designed, used, or maintained to carry more than 10 persons, including the driver.¹⁴ Amore's CEO acknowledged at the evidentiary hearing that she had a non-commercial driver's license and no endorsement on December 18, 2021. As set forth above, the limousine driven by Amore's CEO had a seating capacity of 11 persons. Therefore, Amore violated the requirements of the California Vehicle Code when its CEO operated a commercial motor vehicle on December 18, 2021 without a commercial driver's license and a commercial endorsement.

¹⁰ A modified limousine has a seating capacity of not more than 10 persons, including the driver. Pub. Util. Code Section 5361. Even if the limousine in use on December 18, 2021 was a modified limousine and not a bus, a CHP inspection of the terminal from which the limousine operates is required once every 13 months.

¹³ Cal. Code of Regulations Section 1231.3(a). No evidence was presented at the hearing that the terminal inspection required for a modified limousine was performed.

¹¹ Exhibit CPED-6.

¹² GO 157-E Section 5.01.

¹³ Cal. Veh. Code Section 15250(a)(1).

¹⁴ Cal. Veh. Code Section 15278(a)(2).

6. Advertisement as Charter-Party Carrier without Valid Authority

A corporation or person is prohibited from knowingly and willfully issuing any advertisement or other holding out to the public that the corporation or person is in operation as a charter-party carrier without having a valid certificate or permit.¹⁵ In June 2020, Amore made two posts on Facebook under the heading “Amore Limousine Service” during the period when its Commission authority to operate as a charter-party carrier had been suspended.¹⁶ In addition, during the period when Amore’s operating authority as a charter-party carrier had been suspended, a statement by Amore’s CEO that “Amore Limousine Service specializes Napa and Sonoma wine tours” was posted on Yelp’s website and was not removed by Amore.¹⁷ In making those postings, Amore did knowingly and willfully hold itself out to the public as an operating charter-party carrier when it had no Commission operating authority to do so. Therefore, Amore did violate Pub. Util. Code Section 5414.5.

7. CPED Motion for Leave to File Confidential Compliance Filing under Seal

CPED’s motion for leave to file its confidential Compliance Filing under seal seeks to keep confidential personal information regarding Amore’s CEO. Good cause was established to grant the motion. Therefore, CPED’s motion for leave to file its confidential Compliance Filing under seal is granted.

CONCLUSION

The testimony and documentary evidence admitted at the evidentiary hearing established by a preponderance of the evidence each of Amore’s five violations referenced in the Citation. The Citation imposes a total penalty of \$4,000. As set forth above, CPED could have imposed a penalty of up to \$7,500 for each violation, and therefore CPED had the authority to impose the total penalty of \$4,000 set forth in the Citation. Based upon the facts set forth above, there was sufficient evidence to support the \$4,000 penalty amount. As a result, Amore’s appeal should be dismissed, and the five violations and penalty of \$4,000 set forth in the Citation should be affirmed.

¹⁵ Pub. Util. Code Section 5414.5.

¹⁶ Exhibit CPED-2 Attachment 8.

¹⁷ *Ibid.*

COMMENTS

The draft resolution was served on the parties for public review and comment in accordance with Pub. Util. Code Section 311(g)(1), Article 14 of the Commission's Rules of Practice and Procedure, and Rule 18 of Resolution ALJ-377.

FINDINGS AND CONCLUSIONS

1. The Commission suspended Amore's authority to conduct charter-party carrier operations effective March 23, 2020, and that suspension continued without interruption through December 18, 2021.
2. On December 18, 2021, Amore operated a limousine driven by its CEO to engage in charter-party carrier operations for compensation.
3. On December 18, 2021, Amore did not have liability protection of \$1,500,000 for bodily injury and property damage covering the limousine that Amore operated that day.
4. The limousine operated by Amore on December 18, 2021 had a seating capacity of 11 persons, including the driver.
5. The CHP did not inspect the limousine operated by Amore on December 18, 2021 or Amore's maintenance facility at any time in the 13 months before December 18, 2021.
6. On December 18, 2021, Amore's CEO did not have a valid commercial driver's license or an endorsement issued by the Department of Motor Vehicles to operate any commercial motor vehicle.
7. In June 2020, Amore made two postings on Facebook under the heading "Amore Limousine Service."
8. During the period in which its authority to operate as a charter-party carrier had been suspended by the Commission, Amore's CEO made the statement on Yelp's website that "Amore Limousine Service specializes Napa and Sonoma wine tours."
9. Amore violated Pub. Util. Code Section 5379 by engaging in charter-party carrier operations for compensation on December 18, 2021 when its operating authority was suspended.

10. Amore violated Pub. Util. Code Section 5391 and GO 155-G(1) by not maintaining liability protection of \$1,500,000 for bodily injury and property damage while performing charter-party carrier operations on December 18, 2021.
11. Amore violated Cal. Veh. Code Section 34501(c) and (e) on December 18, 2021, by operating a limousine with a seating capacity of 11 persons that met the definition of a bus without having the CHP inspect Amore's maintenance facility within the 13 months before December 18, 2021.
12. Amore violated Cal. Veh. Code Sections 15250(a)(1) and 15278(a)(2) on December 18, 2021, when its CEO operated an Amore commercial motor vehicle without a valid commercial driver's license and operated an Amore passenger transportation vehicle with a seating capacity of 11 persons without a commercial endorsement issued by the Department of Motor Vehicles.
13. Amore violated Pub. Util. Code Section 5414.5 by knowingly and willfully holding itself out to the public that it was operating as a charter-party carrier during a period when its Commission authority to operate as a charter-party carrier had been suspended when it made two postings on Facebook under the heading "Amore Limousine Service" and when Amore's CEO stated on Yelp's website that "Amore Limousine Service specializes Napa and Sonoma wine tours."
14. The Commission's penalty of \$4,000 on Amore for five violations is below the allowable maximum civil penalty amount of \$7,500 per violation set forth in Pub. Util. Code Section 5378(b) and is supported by the evidence.
15. CPED's motion for leave to file its confidential Compliance Filing under seal should be granted.
16. K.22-06-007 should be closed.

Therefore, **IT IS ORDERED** that:

1. The Appeal of Amore Limousine Service Inc. to Citation No. T.22.04-002 issued on April 5, 2022 by the California Public Utilities Commission's Consumer Protection and Enforcement Division is dismissed.
2. The five violations and penalty set forth in Citation No. T.22.04-002 are affirmed.
3. Amore Limousine Service Inc. must pay the penalty of \$4,000.00 within 30 days of the date of issuance of this resolution 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, CA 94102-3298. Amore Limousine Service Inc. shall write on the face of the check or money order "For deposit to the State of California General Fund per Resolution ALJ-428."

4. The California Public Utilities Commission Consumer Protection and Enforcement Division's motion for leave to file its confidential Compliance Filing under seal is granted.
5. K.22-06-007 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:

RACHEL PETERSON
Executive Director

N O T I C E

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Resolution ALJ-428 ALJ/PWI/sgu

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

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K2206007 LIST

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