

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

Date August 16, 2023

Agenda ID #21811

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ 444:

This is the draft Resolution of Administrative Law Judge Jacob L. Rambo Resolving K.23-01-021. 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 Administrative Law Judge Jacob L. Rambo at Jacob.rambo@cpuc.ca.gov.

~~/s/ MICHELLE COOKE~~

Michelle Cooke

Acting Chief Administrative Law Judge

MLC:mef

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-444
Administrative Law Judge Division
[Date]

RESOLUTION

RESOLUTION ALJ-444 Resolves K.23-01-021, the Appeal of Citation No. #T.23-01-001 by Ali B Zanjani, dba Royalty Limousine.

SUMMARY

This resolution resolves the appeal of Citation No. T.23-01-001 issued to Ali B Zanjani, doing business as (dba) Royalty Limousine by the Consumer Protection and Enforcement Division of the California Public Utilities Commission (CPED) on January 4, 2023. The citation imposed a fine of \$5,000 for three violations alleged to have occurred between October 29 and November 2, 2022. Counts 1 and 2 of the citation are dismissed. Count 3 is sustained. A penalty of \$1,000 is now due.

BACKGROUND

The California Public Utilities Commission (Commission) regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Public Utilities Code § 5351, et seq.) Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, the Commission's CPED is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities 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-377.

On October 29, 2022, CPED enforcement officials conducted an enforcement operation in San Diego, California in conjunction with the San Diego Police Department. They observed an 11-passenger limousine, California license plate 55876L3, displaying Transportation Charter Party (TCP) certification number TCP 16194-P. A record check revealed that the TCP 16194-P was issued to Ali B Zanjani dba Royalty Limousine (appellant) and that appellant's authorization to operate was suspended effective August 31, 2022. California Department of Motor Vehicles records indicated that the driver of the limousine did not have a valid medical certificate, a condition of his

license to operate the vehicle. CPED also examined two waybills and determined that they lacked the required information.

On January 4, 2023, Citation T.23-01-001 was issued to appellant. The citation alleged three violations occurring between October 29 and November 1, 2022:

- (1) Operated as a charter-party carrier after suspension of its authoring in violation of Public Utilities Code Section 5379¹;
- (2) Engaged one (1) driver without being licensed with the proper endorsement and medical certificates in violation of Section 5387(b)(c)(1)(E)(3)², General Order (GO) 157-E, Part 5.01, and California Vehicle Code Sections 15250 and 15278; and
- (3) Failed to include pertinent information on the waybills in violation of Section 5381 and GO 157-E, Part 3.01.

Mr. Zanjani submitted an appeal. The appeal was formally filed by the Commission's electronic docketing system on January 25, 2023.

DISCUSSION

Timeliness

The timeliness of an appeal is a jurisdictional question. TCP citation appeals must be filed with the Commission's Docket Office no later than 20 days after service of the

¹ Unless otherwise specified, subsequent statutory references are to the Public Utilities Code.

² At the hearing, CPED clarified that the intent was to cite appellant for violations of Public Utilities Code Section 5387(b), 5387(c)(1)(E), and 5387(d)(3). CPED is advised to take greater care in identifying statutory provisions in future citations. The citation and compliance filing provide notice to the cited party from which it may prepare a response, gather evidence, and present a defense. Due process requires that an appellant receive proper notice of the basis for the action. Combining multiple subsections, each describing duties with different elements is confusing and can be misleading.

It is unnecessary to reach the question of whether the appellant received adequate notice of a violation of Section 5387(d)(3) prior to the hearing. The citation failed to give notice to appellant that a subsection (d) violation was alleged. However, subsection (d)(3) does not describe a duty of TCP owners or drivers. Rather, it provides impound authority to law enforcement. It does not, as a matter of law, provide a basis for disciplinary authority. Accordingly, subsection (d)(3) is not addressed in this resolution.

Similarly, subsection (b) does not provide authority to discipline a TCP holder. Subsection (b) authorizes the suspension of driving privileges for drivers who drive for a TCP without the necessary license, certification, and endorsements. Subsection (b) is not addressed in this resolution.

citation unless granted an extension (Resolution ALJ-377, Appendix A, Section 2). Appellant first contacted the Docket Office on January 23, 2023, to file the appeal. Due to technical challenges requiring coordination between the Appellant and the Docket Office, the appeal was not formally marked as filed until January 25, 2023. The date that the Appellant initially filed the documents was within 20 days of service of the citation. Accordingly, the appeal was timely.

Factual conclusions

There are factual issues in dispute that require resolution. The first involves whether Mr. Zanjani knew his TCP registration was suspended prior to transporting passengers on October 29, 2022.

The parties did not dispute that the Commission utilizes an online portal for TCP certificate holders. The portal is utilized for various purposes and transactions. It includes a messaging feature that allows Commission staff to communicate with TCP holders. The messaging portal records when a message is read. The subject line of a message is displayed, even when the message is not opened and read. Mr. Zanjani had experience using the portal messaging system. For example, a message sent in May 2022 notified Mr. Zanjani that certain California Highway Patrol inspections were due and that his registration could be suspended if the inspections were not completed. These messages were marked as read when CPED staff reviewed the portal after October 29, 2022.

A message was sent to Mr. Zanjani via the portal on August 31, 2022. The subject line stated that Mr. Zanjani's TCP privileges were suspended. When CPED checked the portal after October 29, 2022, that message was marked as having not been read.

Mr. Zanjani testified that he did not know of the suspension prior to October 29, 2022. He explained that he first became aware of the suspension when CPED contacted him after the vehicle stop on October 29, 2022. He testified that he is familiar with a computer portal utilized by the Commission for TCP holders' activities and transactions, but that he only accesses the portal when required for transactions.

CPED presented only circumstantial evidence to demonstrate that Mr. Zanjani was aware of the suspension. This evidence included the observation that Mr. Zanjani was upset and argumentative when contacted by CPED during CPED's investigation, insisting that his TCP registration was not suspended. CPED also presented evidence that Mr. Zanjani had been licensed for more than a decade, that he knew how to access the portal, and that he also knew that a suspension was possible if he did not obtain an inspection by the deadline established in a prior communication which he acknowledged that he received.

CPED's circumstantial evidence is amenable to interpretations favoring the conclusion it urges and to interpretations favoring Mr. Zanjani's testimony. The direct testimony presented by Mr. Zanjani, under oath and subject to cross-examination, is of more convincing weight. Accordingly, his testimony is credited.

The second conflict involves the question of the Department of Motor Vehicles (DMV) Employer Pull-Notice (EPN) system. It is not disputed that the appellant was registered with the EPN system, that the driver contacted by CPED was registered as one of the appellant's drivers enrolled in the EPN system, and that in 2021 the system issued a notice to the appellant that the driver's medical certificate was set to expire. CPED testified that a copy of the 2021 notice was obtained as part of the investigation. No testimony or evidence was presented in a notice informing the appellant that the driver's certificate had expired and/or had not been renewed. The appellant provided uncontradicted testimony and evidence that the driver had obtained a new medical certificate and had submitted the required paperwork timely to DMV. CPED had the ability to produce stronger evidence of knowledge, specifically, an EPN notification that the driver was not properly licensed. It did not. The inference that no EPN was issued is credited.

Count 1-Operating While Suspended

Section 5379 prohibits a TCP from operating during a period of suspension. In the present case, a suspension was issued on August 31, 2022, pursuant to Section 5378.5, a provision that requires the Commission to issue an interim suspension, subject to appeal, when the California Highway Patrol certifies that inspection requirements have not been satisfied. Section 5413 authorizes fines for failure to "obey, observe, or comply" with orders of the Commission.

Section 5379 does not expressly state that a TCP knowingly operated while suspended, but knowledge of the suspension is an implied element in light of the statutory scheme. Section 5378.5 requires the Commission to issue a written notice of the suspension. The plain meaning of the words obeys, observe, or comply requires that the individual has knowledge of a standard or expectation with which to obey, observe, or comply.

A TCP holder knowingly embarks upon a business in a highly regulated industry. It attests that it will follow the applicable laws and regulations. Whether or not the TCP holder actually reads each law, he or she has access to the necessary information to ensure compliance and, therefore, knowledge of the law or regulation. The same cannot be said for interim suspensions. A TCP holder does not know it cannot operate unless it is informed in some way. In this case, there is insufficient evidence that the message was ever received.

Appellant did not know that his TCP registration was suspended during the period October 29-November 1, 2022. Accordingly, he did not violate Section 5379. Count 1 is dismissed.

Count 2-Allowing A Driver to Operate Without Necessary Endorsements

GO 157-E, Part 5.01 requires all TCP drivers to comply with the licensing requirements of the Vehicle Code and applicable motor carrier safety regulations. Section 5387(c)(1)(E) authorizes revocation of a TCP when the TCP holder knowingly employs a driver who does not have a current and valid driver's license of the proper class and the endorsements necessary to operate the vehicle.³ CPED relied upon these provisions to impose a fine under Section 5378.⁴

In 2021, the appellant was notified that the driver's medical endorsement was due to expire. The driver obtained a new medical examination and provided a copy to the appellant. The driver attempted to renew the certificate at a DMV field office but was informed that field offices no longer renew medical endorsements and that he was required to mail the documents to DMV headquarters in Sacramento. The driver informed the appellant that the paperwork was mailed before the expiration date and provided the appellant with a copy of the medical examination. The driver later learned that DMV misprocessed the application. Accordingly, the driver did not knowingly fail to follow the rules and only learned after the fact that the endorsement expired.

Section 5387(c)(1)(E) requires proof that the appellant knowingly allowed the driver to operate a regulated vehicle without a valid endorsement. While the other provisions cited do not expressly require knowledge, knowledge is an implied element for the reasons identified in the discussion of Count 1. The appellant did not knowingly allow the driver to operate with an invalid endorsement. The driver provided proof that the medical examination had been completed and mailed it to the DMV before the expiration date. The appellant did not receive an EPN system notice flagging the driver as ineligible to drive. Accordingly, Count 2 is not sustained.

³ Vehicle Code Sections 15250 and 15278 were cited as part of the basis for Count 2. Section 15250 describes the requirement that commercial vehicle driver's hold the appropriate, valid commercial driver's license and the testing procedure for obtaining a commercial driver's license Section 15278 defines the vehicles for which a driver must obtain an endorsement from the Department of Motor Vehicles. Neither supply independent authority for suspending a TCP for allowing a driver to operate without the necessary licensure.

⁴ Section 5378 authorizes imposition of civil penalties of up to \$7,500 for violating any provision of the Public Utilities Code and other regulatory provisions applicable to TCP holders.

Count 3-Waybill Violations

GO 157-E, Part 3.01 requires that TCP companies may only provide transportation on a prearranged basis. The driver providing transportation must possess a waybill that includes nine pieces of information, including the name and TCP number of the carrier, the vehicle license plate number, and the method by which the transportation was arranged (telephone, written contract, or electronic communication).

CPED reviewed two waybills possessed by the driver at the time of the stop. Neither waybill listed the license plate number of the vehicle or how the transportation was arranged. Both listed the name of the TCP as "Royalty Limousine, Inc." Appellant's TCP was issued to "Ali B Zanjani dba Royalty Limousine." The appellant admitted each of the alleged way-bill omissions. Accordingly, Count 3 is sustained.

Penalty

The initial citation imposed a total fine of \$5,000 pursuant to Section 5378. At hearing CPED explained that the fine should be broken down as \$2,000 for Count 1, \$2,000 for Count 2, and \$1,000 for County 3.⁵ As Count 1 and Count 2 are not sustained, the fine is reduced accordingly. Resolution M-4846, Appendix 1 identifies five factors to consider in assessing a penalty. The factors are evaluated as follows:⁶

- (1) Severity or Gravity of the Offense: The offense involved 6 total violations. None of the of the offenses involved economic or physical harm, or the threat of harm to the public or the Commission's regulatory processes. Accordingly, this factor is neither aggravating nor mitigating and is not given significant weight in calculating the penalty.
- (2) Conduct of the regulated entity: Appellant was previously fined in 2015 (Citation FC-774) for multiple violations, including waybill violations. The fine in that citation totaled \$2,000 for four counts, with two of those counts involving multiple violations. In the present violation, the waybill issues demonstrate a high degree of culpability. The waybills included a section for method of booking and the license plate number. Each was filled in with typed, generic, non-compliant information, indicating a decision on the part of the appellant to not list the information, rather than simple negligence or an

⁵ CPED is encouraged, when alleging multiple counts, to the break the penalty down by count in the citation.

⁶ Each element includes subfactors. Those not addressed were either irrelevant or not weighed for purposes of assessing the penalty.

omission by forgetting to list the information. Accordingly, this factor is determined to be aggravating and afforded significant weight in assessing the penalty.

- (3) Financial Resources of the Regulated Entity, Including Size:
Testimony at the hearing established that entity is small, but that it generates sufficient revenue and profit to afford to pay the fine. Accordingly, this factor is not given weight in calculation of the fine. It is given weight for purposes of rejecting the request for a payment plan.
- (4) Totality of the Circumstances in Furtherance of Public Interest:
The waybill rules are not complex, nor is compliance with the rules difficult. The combination of the prior violation and the purposeful nature of the violation demonstrates an unwillingness to adhere to the rules and/or an effort to circumvent the obligations of a TCP holder to its customers. Accordingly, this factor is found to be aggravating and given significant weight in assessing the penalty.
- (5) The Role of Precedent: Precedent, other than the prior violation addressed above, is not given significant weight in assessing the penalty due to the aggravating factors already identified.

Based upon the multiple aggravating factors and the lack of mitigation, the CPED calculation of a \$1,000 fine is upheld. Appellant's testimony demonstrates the ability to pay the fine and the factors above do not support granting a payment plan.

COMMENTS

Cal. 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. Accordingly, the draft Resolution was timely mailed for comments. No comments were received.

FINDINGS

1. The appeal was timely filed.
2. Ali B Zanjani dba Royalty Limousine did not violate Public Utilities Code Section 5379 on or about and between October 29 and November 2, 2022. Count 1 of the citation is dismissed and the fine of \$2,000 set aside.
3. Ali B Zanjani dba Royalty Limousine did not violate Public Utilities Code Section 5387(c)(1)(E) or GO 157-E, Part 5.01 on or about and between October 29

and November 2, 2022. Count 2 of the citation is dismissed and the fine of \$2,000 set aside.

4. Ali B Zanjani dba Royalty Limousine committed six violations of Public Utilities Code Section 5381 and GO 157-E, Part 3.01 on or about and between October 29 and November 2, 2022. Count 3 of the citation is affirmed and the fine of \$1,000 is upheld.
5. A fine of \$1,000 complies with Resolution M-4846, Appendix 1 and is appropriate based upon the facts.
6. The request for a payment plan is denied.

THEREFORE, IT IS ORDERED that:

1. Count 1 and Count 2 of Citation No. T.23-01-001 are dismissed.
2. Count 3 of Citation No. T.23-01-001 is affirmed.
3. Ali B Zanjani dba Royalty Limousine shall pay a fine of \$1,000 within 45 days of the effective date of this resolution. Payment shall be made by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office, 505 Van Ness Avenue, Room 300, San Francisco CA 94102. Ali B Zanjani dba Royalty Limousine shall write on the face of the check or money order "For deposit to the General Fund per resolution ALJ-444."
4. K.23-01-021 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

ALJ/JRO/mef/sgu

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

~~RESOLUTION ALJ-444 Resolves K.23-01-021, the Appeal of Citation No. #T.23-01-001 by Ali B Zanjani, dba Royalty Limousine.~~

INFORMATION REGARDING SERVICE

~~I have electronically served all persons on the attached official service list who have provided an e-mail address for K.23-01-021.~~

~~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 August 16, 2023, 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.~~

***** PARTIES *****

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

Last Updated on 16-AUG-2023 by: AHB
K2301021 LIST

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