

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-191
Administrative Law Judge Division
April 27, 2006

R E S O L U T I O N

RESOLUTION ALJ-191 in the Matter of the Appeal of Citation FC-022, affirming in part and dismissing in part, pursuant to Resolution ALJ-187.

Marcelo Poirier, Attorney at Law, Legal Division, for Consumer Protection and Safety Division.

Greg Reed, in pro per, for Emerald City Limousine.

Findings of Fact

1. On December 19, 2005, the Commission served Citation number FC-022 (the citation) on Emerald City Limousine (respondent) in accordance with Resolution ALJ-187. On December 21, 2005, respondent served a Notice of Appeal on the Consumer Protection and Safety Division of the Commission (CPSD).

2. Administrative Law Judge Victor D. Ryerson heard this matter on February 8, 2005, in San Diego. The hearing concluded and the matter was submitted on that date.

At the hearing CPSD corrected certain factual allegations in the citation. The circumstances requiring these corrections came to CPSD's attention after issuance of the citation.

At the hearing respondent also stipulated that it had violated statutes and orders as alleged in paragraphs 1, 2, 5, 6 and 7 of the citation. As to these violations respondent offered only evidence in mitigation.

3. Respondent is an individual doing business as Emerald City Limousine. On December 23, 2003, the Public Utilities Commission of the State of California

(Commission) granted Class P Charter-Party Permit number TCP017042 – P to respondent. Respondent's current permit remains in effect until December 23, 2006, unless suspended or revoked. Conditions 1 and 2 of the permit respectively limit respondent to the use of vehicles under 15-passenger seating capacity, and prohibit respondent from operating any vehicle(s) that are not adequately covered by a public liability and property damage insurance policy or surety bond as required by Public Utilities Code Section 5392.

On June 28, 2005, G's Limo LLC sought Charter-Party Carrier Authority from the Commission. The application was signed by Greg Reed (Reed), President. On September 15, 2005, the Commission granted that applicant a Class B Charter-party Certificate.

4. Lourdes Garcia, a CPSD inspector, conducted an investigation of respondent's operations for the period encompassing April 1 through June 30, 2005. CPSD issued the citation on the basis of evidence Garcia obtained during her investigation.

5. With respect to paragraph 3 of the citation, Garcia requested an affidavit and declaration from the Department of Motor Vehicles (DMV) Pull Notice Unit in Sacramento regarding respondent's participation in the program. In response the DMV Pull Notice Unit furnished an affidavit, dated June 3, 2005, which stated that respondent had been enrolled since October 20, 2003, under Requester Number T8780, and a certified list which showed five drivers enrolled in the program from October 28, 2003, to June 3, 2005. Of the five listed, two drivers were no longer employed by the respondent at that time.

On June 22, 2005, respondent furnished to Garcia a then-current list of its drivers, which contained 17 names. At Garcia's request, on October 31, 2005, DMV furnished a second affidavit, which listed the same five enrolled drivers as the June 3 list. By examining respondent's waybills and comparing them to the DMV list, Garcia determined that respondent had employed 15 drivers who were not first enrolled in the Pull Notice Program during the period encompassed by her investigation, and identified them by name.

6. At the hearing CPSD corrected paragraph 4 of the citation, which now alleges that respondent failed to conduct preemployment drug testing on four (rather than five) employees, and limits the scope of the allegations regarding two employees, Andrea Young and Gavin Reed, to April and May 2005 only.

CPSD relies upon a February 6, 2006 letter from the Substance Review Evaluation Resource Center, which identifies the drivers and their dates of preemployment drug testing, to support the allegations contained in the corrected paragraph 4 of the citation. Garcia compared the names in the letter to those reflected in respondent's waybills, and determined that four drivers who had not received the preemployment testing drove for respondent during the period encompassed by her investigation.

7. In response to the allegations contained in paragraph 3 of the citation respondent presented two cancelled checks dated March 5, 2005, which had been sent to DMV to enroll the employees in question in the Pull Notice Program, and a completed DMV Commercial Employer Pull Notice Enrollment or Deletion of Drivers form, dated March 27, 2005, showing that respondent had sought to add or confirm the enrollment of 15 drivers. In response to the allegations contained in paragraphs 3 and 4 Reed testified that prescreened drivers are automatically enrolled into a random drug testing program when they provide hair samples during preemployment testing. In addition, Reed testified that one alleged employee, Edward Bennett, has never worked for respondent, and that Reed does not know who Bennett is. This testimony is credible.

8. On July 18, 2005, the CPSD License Section received a certificate of insurance demonstrating that the 20-passenger-seating capacity vehicle involved in paragraphs 1 and 2 of the citation was insured under Lincoln General Insurance Co. policy number LPA 103523 for personal liability and property damage in the amount of \$5 million, effective July 14, 2005. The certificate had been issued to G's Limo LLC.

9. A DMV Pull Notice System Employers List of Employees furnished to Garcia on January 26, 2006, shows a total of 13 enrolled employees, all but three of whom had been added by DMV on January 17, 2006.

Conclusions of Law

1. Public Utilities Code Section 5384, subdivision (b), limits a carrier holding a permit designated as a "P" permit to the use of vehicles under 15-passenger seating capacity. Cause exists to cite respondent for violating this statutory requirement by reason of the facts set forth in Findings of Fact 1 and 2. Although Reed obtained authority in July 2005 that permits respondent's affiliate to operate the 20-passenger capacity vehicle involved in this matter, respondent lacked authority to operate the vehicle as alleged. That respondent did so is a stipulated fact.

2. Public Utilities Code Section 5387 and Commission General Order (GO) 115-F require a charter-party carrier to procure specified public liability and property damage insurance coverage. Cause exists to cite respondent for violating this statutory requirement by reason of the facts set forth in Findings of Fact 1 and 2. Respondent has stipulated to this violation.

3. Public Utilities Code Section 5374, subdivision (a)(2), GO 157-D, Part 5.02, and Vehicle Code Section 1808.1 require a charter-party carrier to enroll every driver in the DMV Pull Notice System. Although the records upon which CPSD relied at the time the citation was issued justified citing respondent for this violation, reliable evidence demonstrates that respondent had made a good faith effort to comply with this requirement, and that the reason for the absence of enrollment records is that DMV's reporting system provided inaccurate or untimely information. Cause therefore does not exist to cite respondent for violating this requirement, and this paragraph of the citation should be dismissed.

4. Public Utilities Code Section 5374, subdivision (a)(2), and GO 157-D, Part 10, require a charter-party carrier to enroll every driver, and conduct preemployment testing of every driver, as part of a Controlled Substance and Alcohol Testing Certification Program. Reed testified credibly that respondent complied with these requirements, as set forth in Finding of Fact 7. However, as set forth in Finding of Fact 6, not all employees received the preemployment screening that triggers compliance with this requirement. Cause therefore exists to cite respondent for this violation.

Cause further exists to cite respondent for violating this statutory requirement as alleged in paragraph 5 of the citation by reason of the facts set forth in Findings of Fact 1 and 2. Respondent has stipulated to this violation.

5. GO 157-D, Item 4.01, requires a charter-party carrier to report all equipment operated. Cause exists to cite respondent for violating this requirement as alleged in paragraph 6 of the citation by reason of the facts set forth in Findings of Fact 1 and 2. Respondent has stipulated to this violation.

6. GO 157-D, Item 4.08, requires a charter-party carrier to display correct identification on its vehicles. Cause exists to cite respondent for violating this requirement as alleged in paragraph 6 of the citation by reason of the facts set forth in Findings of Fact 1 and 2. Respondent has stipulated to this violation.

7. The violations set forth in Conclusions of Law 1, 2 and 4 through 6 violate Conditions 1 through 4 of permit number TCP017042 – P.

8. In mitigation of the violations set forth above, one alleged violation has not been proven, and the severity of certain others originally alleged has been reduced by CPSD's correction of the citation reduced. There is no evidence that respondent's license has previously been disciplined, and respondent was very cooperative at the hearing. However, respondent should not have operated the new 20-passenger-seating vehicle that belongs to G's Limo LLC without proper authority, and doing so constitutes a serious licensing violation. On balance, these circumstances indicate that the fine should be reduced from \$1,500.00 to \$1,250.00.

Comments

This Resolution was issued for public review and comment in accordance with Public Utilities Code Section 311, subdivision (g). No comments were received. Minor non-substantive revisions and corrections have been made.

IT IS THEREFORE RESOLVED that:

1. Citation FC-022 is affirmed except as provided herein.
2. Paragraph 3 of the Citation is dismissed.

3. Respondent Greg Reed dba Emerald City Limousine shall pay a fine of \$1,250.00 pursuant to Public Utilities Code Section 5378 within 30 days of the effective date of this order. Payment shall be made by check or money order payable to the California Public Utilities Commission and sent to the Commission's Fiscal Office, 505 Van Ness Avenue, San Francisco, California 94102. Upon payment the fine shall be deposited in the State Treasury to the credit of the General Fund and this citation shall become final.

4. If respondent fails to pay the fine as provided herein, the Commission's Consumer Protection and Safety Division shall immediately revoke permit number TCP017042 – P, and may take any other action provided by law to recover the unpaid fine and ensure compliance with applicable statutes and Commission orders.

This resolution is effective today.

I certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on April 27, 2006, by approval of the following Commissioners:

STEVE LARSON
Executive Director

CPSD Citation Number FC-022

The Service List will be as follows:

Greg Reed dba Emerald City Limousine
1160 Volmer Peak Court
Chula Vista, CA 91913

Greg Reed - President / Owner
2220 Otay Lakes Road #502-109
Chula Vista, CA 91915

ALJ Victor D. Ryerson
CPUC
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S.F., CA

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