

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska) Docket No. B-1909
Public Service Commission, on)
its own motion, seeking to)
require Bus at the Yard, d/b/a)
Luxury Limousine, Lincoln, to) SHOW CAUSE DISMISSED
show cause why its Certificate)
of Public Convenience and)
Necessity issued in Docket No.)
B-1909 should not be revoked.) Entered: September 14, 2021

BY THE COMMISSION:

On July 27, 2021, the Nebraska Public Service Commission ("Commission") entered an Order requiring Bus at the Yard, d/b/a Luxury Limousine ("Luxury Limousine"), Lincoln, to show cause why its Certificate of Public Convenience and Necessity should not be revoked.¹ Luxury Limousine was named a Respondent in a Complaint against numerous carriers for failure to timely remit annual renewal fees in accordance with Neb. Rev. Stat. § 75-305. In its June 8, 2021 Order, the Commission levied an administrative penalty against Luxury Limousine in the amount of four-hundred dollars (\$400) and ordered Luxury Limousine cease and desist all services.²

Hearing was scheduled for August 25, 2021. Notice of the Hearing was published The Daily Record, Omaha, Nebraska, on August 3, 2021.

Hearing was held on August 25, 2021, in the Commission Hearing Room and simultaneously via electronical means. Ms. Jamie

¹ See Docket B-1909 *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to require Bus at the Yard, d/b/a Luxury Limousine, Lincoln, to show cause why its Certificate of Public Convenience and Necessity issued in Docket No. B-1909 should not be revoked, Order to Show Cause and Schedule Hearing* (Entered: July 27, 2021).

² See Docket MCC-3196.03 *Jamie L. Reyes, Director, Motor Transportation Department, Nebraska Public Service Commission, Lincoln, Nebraska COMPLAINANT vs. 9 Line Medical Solutions, LLC; A Helping Hand Moving, LLC; Alpha Life Improvement Services; Ambassador Transportation, LLC; Big O's Party Bus, LLC; Black Diamond S & S; Bus at the Yard d/b/a Luxury Limousine; Daniel's Moving & Storage of Omaha; FunFamily Party Bus, LLC; Laidback Limousine, Inc.; Limousine Services, LLC; Medics At Home Inc.; Midwest Medical Transport Co., LLC; Murphy Moving, Inc.; National Arbor Day Foundation; National Health Transport, Inc.; Nebraska Excellent Health Transport; Omaha Ambulance Service, Inc.; Omaha Omaha Handicap Trans. Serv.; Premier Limousine, LLC; Ride the Good Life, LLC; Royal Limousine Service, Safe Ride Shuttle; Smiley's; SNP Consulting Services; Travel Plus Limousines; and Unity Transportation Services, Inc., RESPONDENT, Order Dismissing, In Part, And Sustaining, In Part* (Entered: June 8, 2021).

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Reyes and Mr. Dillon Keiffer-Johnson appeared on behalf of Commission Staff. No other Attorneys entered an appearance.

E V I D E N C E

Testimony

Jamie Reyes, Director of the Transportation department, testified on behalf of Commission staff. Ms. Reyes stated that Luxury Limousine was a Respondent in the department's complaint against several carriers for failure to comply with 2021 annual renewal requirements.³ She explained that a copy of the complaint was sent to Luxury Limousine via certified mail return receipt requested to the address the Commission had on file.⁴ Ms. Reyes confirmed that the department received a signed returned receipt showing notice had been received for the complaint.⁵

Ms. Reyes testified that Luxury Limousine completed the annual renewal requirements on March 31, 2021. Ms. Reyes stated that Luxury Limousine accrued a \$400 late fee pursuant to the department's fee schedule.⁶ She explained that Commission staff attempted on numerous occasions to contact Luxury Limousine to discuss the additional steps necessary to dismiss the company from the complaint. Ms. Reyes noted that no representative for Luxury Limousine appeared at the hearing on the complaint. After the hearing, the Commission entered an Order on June 8, 2021, in docket MCC-3196.03, in which the Commission assessed the \$400 fine against Luxury Limousine for failure to timely remit annual renewal fees.⁷ Ms. Reyes stated that under Commission Rule 007.006B, an assessed penalty is required to be paid within 30 days from the date the Order assessing such penalty is mailed. She further noted that failure to meet that deadline could result in the Commission pursuing revocation of an authority or referring the matter to the attorney general's office for collection.⁸

Ms. Reyes then noted that as part of an earlier docket opened in January, the Commission ordered certain carriers to suspend service for failure to meet the January 1, 2021, annual renewal deadline. She further noted that Luxury Limousine was also a

³ *Id.* at 9:21 - 9:25.

⁴ The address on file for Luxury Limousine's headquarters is 350 Canopy Street, Suite 100, Lincoln, Nebraska.

⁵ *Id.* at 11:3 - 11:5.

⁶ *Id.* at 11:6 - 11:16.

⁷ *Id.* at 12:15 - 12:21.

⁸ *Id.* at 12:22 - 13:6.

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Respondent to that show cause hearing, failed to appear, and was ordered to cease-and-desist providing services until the company was in full compliance with all annual renewal requirements.⁹ Ms. Reyes explained that the cease-and-desist order continued despite Luxury Limousine completing the annual renewal requirements on March 31, 2021, as there was still an outstanding penalty that had not been paid. She noted that the June 8th Order reiterated the cease and desist remained in force and was in force as of the date of this hearing.¹⁰

Ms. Reyes testified that the inaction of Luxury Limousine following the June 8th Order led to the present show cause proceeding. She stated that notice of the hearing was sent to Luxury Limousine via certified mail return receipt requested to the same address as all other mailings. Ms. Reyes testified that this notice was returned to the Commission as undeliverable and unclaimed with no forwarding. She further testified that to ensure Luxury Limousine receive proper notice of this hearing, notice was published in *The Daily Record* and Commission Investigator Josh Medeiros was sent to personally serve Luxury Limousine a copy of the Order scheduling hearing. Ms. Reyes stated that Mr. Medeiros was able to effectuate service and was available to answer questions regarding the personal service of Luxury Limousine.¹¹

Ms. Reyes concluded her testimony by referring to Neb. Rev. Stat. § 75-315, which gives the Commission the ability to revoke a carrier's Certificate for several reasons.¹² Ms. Reyes recommended that due to the inactivity of Luxury Limousine following the June 8th Order, the Commission should revoke the Certificate granted to Luxury Limousine in B-1909.¹³

In response to Commissioner questions, Ms. Reyes suggested that if Luxury Limousine had paid the penalty prior to the hearing or if they were currently prepared to pay the penalty, the department could recommend dismissal of the show cause. Ms. Reyes reiterated that the ultimate decision rests with the Commission to determine if the lack of compliance shown by Luxury Limousine has risen to the level in which revocation is appropriate.¹⁴ Ms. Reyes

⁹ *Id.* at 13:7 - 13:21.

¹⁰ *Id.* at 13:22 - 14:13.

¹¹ *Id.* at 14:14 - 15:20.

¹² *Id.* at 15:21 - 16:4.

¹³ *Id.* at 16:5 - 16:16.

¹⁴ *Id.* at 17:2 - 17:22.

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also restated that proof of current insurance, as well as all other annual renewal requirements, were received on March 31, 2021.¹⁵

Next, Mr. Josh Medeiros, investigator for the Transportation department, testified for the Commission. Mr. Medeiros stated that his job duties include inspecting carrier's vehicles and investigating consumer complaints and Commission complaints against regulated carriers.¹⁶ When asked about his personal service of the Commission Order, Mr. Medeiros testified that he authored the affidavit of personal service on Antonio Ficklin and a written narrative of personal service, respectively Commission Exhibits 6 and 7, and attested to the accuracy of each.¹⁷

In discussing the events surrounding the effectuation of service for this proceeding, Mr. Medeiros explained that he attempted multiple times to contact Ms. Lauren Marsh and Mr. Eric Marsh at their respected addresses, all of which were unsuccessful. He stated that he then attempted service at the address the Commission had previously sent notices. Mr. Medeiros testified that upon arriving at the address, he spoke to an employee who informed him that Ms. Marsh was out of town until Monday, August 23. Mr. Medeiros concluded his testimony by stating that he eventually contacted Ms. Marsh who confirmed via telephone that the employee had authority to receive service of the show cause on her behalf.¹⁸ Responding to a question from Commissioner Schram, Mr. Medeiros stated that he did not have any conversations with Ms. Marsh regarding her noncompliance, he only effectuated service of the hearing.¹⁹

Ms. Marsh then made a statement on behalf of Luxury Limousine. Ms. Marsh began by stating that when she received the phone call from Mr. Medeiros on August 20th, that was the first time she was made aware of Luxury Limousine's non-compliance. She testified that it was her belief that everything had been taken care of and that she was in good standing. Ms. Marsh testified that she was prepared to pay the outstanding fine right away.²⁰ Commissioner Johnson then asked how the department would like to proceed given Ms. Marsh's offer. Ms. Reyes confirmed the ability to receive immediate payment and that such payment would complete the last outstanding piece of compliance. Ms. Reyes further suggested that

¹⁵ *Id.* at 18:9 - 18:17.

¹⁶ *Id.* at 20:13 - 20:24.

¹⁷ *Id.* at 20:25 - 21:11.

¹⁸ *Id.* at 21:12 - 22:12.

¹⁹ *Id.* at 22:23 - 23:7.

²⁰ *Id.* at 24:6 - 24:15.

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the hearing would still be an appropriate place to ask additional questions of Ms. Marsh in determining how the Commission would like to proceed.²¹

In response to Commission questions, Ms. Marsh confirmed that she is now directly responsible for the company but has a partnership with a new individual. Ms. Marsh further reiterated that she did not receive notice of Luxury Limousine's noncompliance until the phone conversation with Mr. Medeiros. She explained that she has a company that checks the mail for her at the provided address and she believes that company must have done something with it. Ms. Marsh stated that going forward she can change the service address to her personal residence to ensure receipt of any Commission outreach.²² Ms. Reyes confirmed that a carrier can update their address at any time.²³ Later, responding to Commissioner concerns regarding Luxury Limousine's relationship with the Commission moving forward, Ms. Marsh explained that arrangements can be made to provide the department with multiple avenues of communication to ensure a company response. Ms. Marsh also noted that Luxury Limousine responds to all telephone calls within 48 hours. Ms. Marsh stated that she is exerting efforts to resolve the company's communication issues.²⁴

Responding to Ms. Marsh's testimony, Ms. Reyes detailed that the department has attempted service at Ms. Marsh's personal address numerous times and still experiences notice issues. Ms. Reyes noted that mail sent to Ms. Marsh's personal address are also returned unsigned and that personal service attempts are also unsuccessful.²⁵ She further explained that the department also attempts to serve Mr. Eric Marsh as he is still listed as the owner of Luxury Limousine in the Commission records. Such service attempts on Mr. Marsh have also rarely been successful.²⁶ Ms. Reyes explained that attempts to serve Luxury Limousine are made to the business address and personally to Mr. Marsh and Ms. Marsh.²⁷ Ms. Reyes further explained that the evidence presented at this hearing shows that when attempted service on the business is unsuccessful, the department then attempts service in a variety of other ways.²⁸ Ms. Reyes also stated that the department has also attempted to

²¹ *Id.* at 26:4 - 27:8.

²² *Id.* at 27:12 - 29:21.

²³ *Id.* at 29:24 - 30:3.

²⁴ *Id.* at 36:18 - 39:4.

²⁵ *Id.* at 33:9 - 33:21.

²⁶ *Id.* at 33:22 - 34:2.

²⁷ *Id.* at 34:2 - 34:9.

²⁸ *Id.* at 34:10 - 34:15.

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work with Luxury Limousine to update the ownership records of the company, which has yet to be accomplished.²⁹ Ms. Reyes again affirmed the department's willingness to cooperate with Luxury Limousine despite the numerous compliance issues if that is the wish of the Commission.³⁰

Exhibits

Exhibits one through seven were entered into evidence. The Commission also took administrative notice of Luxury Limousine's Commission file, which shows Eric Marsh remains the owner of the company and no subsequent transfer of authority has been approved by the Commission.³¹

O P I N I O N A N D F I N D I N G S

The Commission ordered this proceeding pursuant to Rule 005.01 of Commission Rules of Procedure to require Bus at the Yard, d/b/a Luxury Limousine, to show cause why its Certificate of Public Convenience and Necessity should not be revoked for failure to timely remit the penalty assessed by the Commission in Docket MCC-3196.03.³² Luxury Limousine is a common carrier regulated by the Commission pursuant to Neb. Rev. Stat. § 75-101 et. seq. (2018), and Title 291, NAC Chapter 3 of Commission Rules and Regulations.

Evidence presented at hearing shows that Luxury Limousine indeed failed to pay the \$400 penalty assessed by the Commission by the due date. According to the company representative, Luxury Limousine had no knowledge of the penalty or its due date. The record shows that all Commission orders were sent to the address on file for the company and were not returned as undeliverable.

If this had been the first instance of missed notice, the Commission would be more sympathetic. However, a review of the overall record for Luxury Limousine shows a history of delinquent or all-out lack of compliance and unresponsiveness. The penalty at issue in this proceeding was due to Luxury Limousine failing to comply with annual renewal requirements by either the January 1, 2021 due date or the March 1, 2021 delinquent date. Luxury Limousine was not eligible to request a waiver of the late fee due

²⁹ *Id.* at 34:16 - 34:25.

³⁰ *Id.* at 35:1 - 35:12.

³¹ *Id.* at 32:13 - 32:25.

³² See Docket MCC-3196.03 *Reyes, COMPLAINANT vs. 9 Line Medical Solutions, LLC, et al., RESPONDENTS*, Order Dismissing, In Part, And Sustaining, In Part (Entered: June 8, 2021).

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because the company had been named a Respondent in previous department complaints for the annual renewal requirements. A representative appeared at the August 25, 2021 show cause hearing only due to personal service efforts on the part of Commission staff.

The Commission and its staff should not have to go to such lengths to ensure proper notice to a carrier. It is a certificated or permitted carrier's responsibility to ensure its contact information is up to date and that a company representative can be reached. It is not the Commission's responsibility to keep track of several mailing addresses or telephone numbers to contact a carrier. Questions have been asked of this carrier's fitness in a previous docket.³³ Luxury Limousine was warned about its unresponsiveness and the carrier assured the Commission that management issues had been addressed. However, the record in the present case shows that there has been no improvement in responsiveness or timely compliance.³⁴

Based on the evidence presented, the Commission finds that Bus at the Yard, d/b/a Luxury Limousine, Lincoln, has completed all outstanding compliance related to Department Complaint MCC-3196.03 and is excused from any further action related to the 2021 annual renewal. However, the Commission is extremely concerned with the lack of fitness shown by this carrier over the last several months and questions whether the carrier is fit to continue providing transportation services. As the non-compliance with the annual renewal requirements were the only topic at issue, additional non-compliance issues will be examined and determined in another docket and this show cause proceeding should be dismissed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the show cause proceeding regarding Bus at the Yard, d/b/a Luxury Limousine, Lincoln, be, and is hereby, dismissed.

³³ See Docket B-1909, *In the Matter of the Nebraska Public Service Commission, on its own motion, to require Bus at the Yard, d/b/a Luxury Limousine, Lincoln, to show cause why the Commission should not revoke its Certificate of Public Convenience and Necessity, Order to Dismiss Show Cause, in Part* (Entered December 8, 2020).

³⁴ *Id.* at 7-13.

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 14th day of September, 2021.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Deputy Director

COMMISSIONERS DISSENTING:

