

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

Jamie L. Reyes, Director, ) Docket No. MCC-3198  
 Motor Transportation )  
 Department, Nebraska Public )  
 Service Commission, Lincoln, )  
 Nebraska, )  
 Complainant, ) ORDER SUSTAINING COMPLAINT  
 vs. )  
 )  
 Bus at the Yard d/b/a Luxury )  
 Limousine, Lincoln, Nebraska, )  
 )  
 Respondent. ) Entered: December 14, 2021

BY THE COMMISSION:

On September 14, 2021, Jamie L. Reyes, Director of the Motor Transportation Department ("Complainant") of the Nebraska Public Service Commission ("Commission") filed a motor carrier complaint against Bus at the Yard d/b/a Luxury Limousine ("Luxury Limousine" or "Respondent"), Lincoln, alleging that the carrier violated Neb. Rev. Stat. §§ 75-117, 75-309, and 75-315 by provided intrastate passenger transportation services while services were suspended pursuant to Commission Order. The Commission entered an Order the same day scheduling the matter for hearing and issuing a temporary suspension of services during the pendency of the complaint.<sup>1</sup>

On September 14, 2021, the Commission entered an Order to Show Cause, schedule hearing, and issue temporary suspension of services. Notice of the hearing was personally served to Respondent on September 23, 2021. Hearing on this matter was held on October 19, 2021, via WebEx video conference and in the Commission hearing room. Mr. Dillon Keiffer-Johnson and Ms. Jamie Reyes appeared on behalf of Commission staff. No appearances were made on behalf of Luxury Limousine.

<sup>1</sup> Docket MCC-3198 *Jamie L. Reyes, Director, Motor Transportation Department, Nebraska Public Service Commission, Lincoln, Nebraska, Complainant, vs. Bus at the Yard d/b/a Luxury Limousine, Lincoln, Nebraska, Respondent, Order to Show Cause, Schedule Hearing, and Issue Temporary Suspension of Services* (Entered September 14, 2021).

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## E V I D E N C E

### *Testimony*

Ms. Jamie Reyes, Director of the Motor Transportation Department of the Nebraska Public Service Commission, testified on behalf of the department. Ms. Reyes confirmed that Luxury Limousine was granted a Certificate of Public Convenience and Necessity in May of 2016 and is authorized to provide statewide bus service under either a special party or charter designation as well as the authority to provide stretch or luxury limousine service in Otoe, Cass, Johnson, Nemaha, Richardson, Gage, Pawnee, Jefferson, Thayer, Fillmore, Saline, York, Seward, and Lancaster counties on the one hand, and on the other hand, all other points in Nebraska over irregular routes.<sup>2</sup>

Ms. Reyes described her duties and responsibilities as department director, including oversight of compliance and enforcement of Nebraska statutes and Commission rules and regulations.<sup>3</sup> In later testimony, Ms. Reyes described that the department utilizes a variety of methods to communicate with carriers to ensure compliance and the Commission either opens a motor carrier complaint against the company or schedules a show cause proceeding if the carrier remains noncompliant. She noted that both scenarios allow the Commission to set a hearing providing a carrier the opportunity to discuss the compliance issues at hand and their plans moving forward.<sup>4</sup> Ms. Reyes explained that informal action is usually enough, and the department recommends that the Commission take formal action against a carrier when those actions are unsuccessful in achieving compliance.<sup>5</sup>

Ms. Reyes noted that Luxury Limousine's authority is currently not in good standing.<sup>6</sup> She detailed that the Commission suspended Luxury Limousine's Certificate due to its failure to comply with certain requirements and that status would not change until its compliance issues are addressed and the Commission determines the company could resume services.<sup>7</sup> Ms. Reyes confirmed that the department filed a complaint against Luxury Limousine for noncompliance with certain Nebraska Statutes and Commission rules.<sup>8</sup>

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<sup>2</sup> Hrg. Transcript 9:12 - 10:8 (October 19, 2021).

<sup>3</sup> *Id.* at 8:9 - 8:17.

<sup>4</sup> *Id.* at 12:5 - 13:4.

<sup>5</sup> *Id.* at 13:5 - 13:9.

<sup>6</sup> *Id.* at 8:22 - 8:25.

<sup>7</sup> *Id.* at 9:1 - 9:11.

<sup>8</sup> *Id.* at 13:20 - 13:24.

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She explained that in February the Commission suspended Luxury Limousine's certificate for its failure to timely remit its annual renewal documentation. Included in that suspension was an Order from the Commission for Luxury Limousine to cease and desist all operations until the company became compliant with all applicable Commission rules and regulations. Ms. Reyes detailed that eventually Luxury Limousine was named as a Respondent on a motor carrier complaint for being delinquent with its annual renewal, resulting in an assessment of a four-hundred dollar fine. Ms. Reyes noted that coupled with the fine assessment the Commission reiterated that Luxury Limousine was not to provide for-hire service until the fine was taken care of and the Commission determined the company had fully complied with all applicable Commission rules.<sup>9</sup>

Ms. Reyes explained that because Luxury Limousine did not pay the assessed fee within the period outlined by the Commission, the Department recommended a show-cause proceeding be opened. Ms. Reyes noted that a representative of Luxury Limousine appeared before the Commission at this hearing and insinuated that the company was unaware of any outstanding compliance issues.<sup>10</sup> Ms. Reyes stated that, based on this testimony, Commission staff asked Luxury Limousine to provide records related to potential trips offered between February and August of 2021. The company's response, offered and received as Exhibit 8, showed that Luxury Limousine completed approximately forty-nine (49) trips during the company's suspension period. The department then opened the current complaint.<sup>11</sup>

Ms. Reyes testified that the motor carrier complaint filed against Luxury Limousine alleged that the forty-nine (49) trips completed between February and August of 2021 were each willful violations of the Commission Orders that suspended Luxury Limousine's authority.<sup>12</sup> Ms. Reyes noted that the department is seeking revocation of Luxury Limousine's certificate of public convenience and Necessity, and if the Commission deemed an assessed penalty be appropriate, that such penalty would be based upon the amount of money received by Luxury Limousine for each trip outlined in Exhibit 8.<sup>13</sup> Ms. Reyes concluded her testimony by confirming that Luxury Limousine did not file an answer to the department's complaint and that the complaint filed included language that

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<sup>9</sup> *Id.* at 13:25 - 16:15

<sup>10</sup> *Id.* at 16:16 - 17:5.

<sup>11</sup> *Id.* at 17:6 - 17:23.

<sup>12</sup> *Id.* at 20:12 - 21:13.

<sup>13</sup> *Id.* at 21:14 - 22:2.

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outlined the consequences associated with a failure to timely file an answer.<sup>14</sup>

## *Exhibits*

Exhibits one through three were entered into evidence. Exhibit 4 was a copy of the Commission's Order Scheduling Show Cause Hearing in Docket MT-0001.01.<sup>15</sup> Exhibit 5 was a copy of the Commission's Order Dismissing in Part and Sustaining in Part in Docket MT-0001.01.<sup>16</sup> Exhibit 6 was a copy of the Commission's Order Dismissing in Part and Sustaining in Part in Docket MCC-3196.03.<sup>17</sup> Exhibit 7 was a copy of the Commission's Order to Show Cause and Schedule Hearing in Docket B-1909.<sup>18</sup> Exhibit 8 was a copy of the trip logs received from Luxury Limousine showing trips completed from February 5, 2021 through August 21, 2021. The log also noted the amounts paid for each trip, totaling \$26,377.95.<sup>19</sup> The Commission also took administrative notice of Luxury Limousine's Commission file as well as Commission Rule of Procedure 004.02B and its subparts.<sup>20</sup>

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

Bus at the Yard d/b/a Luxury Limousine ("Luxury Limousine") is a common carrier regulated by the Commission pursuant to Neb. Rev. Stat. §§ 75-101 et. seq. (2018) and 75-301 et. seq. (Cum. Supp. 2020), and Title 291, Chapter 3 of Commission Rules and Regulations.

Pursuant to Neb. Rev. Stat. § 75-309, it is unlawful for a common carrier to engage in intrastate operations in Nebraska without a Certificate of Public Convenience and Necessity issued by the Commission which authorizes such operations. Section 75-117 states that each day any regulated motor carrier fails, neglects, or refuses to comply with any Commission Order shall be considered a separate offense. Additionally, Title 291 N.A.C. Chapter 1, Rule 004.03B2 states that failure to file an answer to a Complaint within twenty (20) days of service will be construed as an admission of the allegations in the complaint except for good cause shown.

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<sup>14</sup> *Id.* at 22:4 - 23:16.

<sup>15</sup> *Id.* at 17:25 - 18:6.

<sup>16</sup> *Id.* at 18:7 - 18:10.

<sup>17</sup> *Id.* at 18:11 - 18:14.

<sup>18</sup> *Id.* at 18:15 - 18:18.

<sup>19</sup> *Id.* at 19:22 - 20:8.

<sup>20</sup> *Id.* at 10:10 - 10:17 and 22:7 - 23:11.

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Respondent violated § 75-309 when it operated without active Commission authority and § 75-117 each day it operated without authority. According to testimony and the Commission Order received as Exhibit 5, Luxury Limousine's Certificate was suspended as of February 2, 2021. The Order stated that the authority would remain suspended until the Commission entered an Order to reauthorize the provision of services. Luxury Limousine was not authorized to engage in any for-hire intrastate transportation operations until the Commission entered an order of reauthorization. The Commission entered an Order on September 14, 2021, finding that the company had completed all outstanding compliance. Exhibit 8 shows that Respondent completed 49 trips from February 5, 2021 to August 21, 2021, when Respondent did not have an active certificate of authority in clear violation of §§ 75-309 and 75-117. Furthermore, Respondent failed to file an answer in this proceeding and therefore all allegations in the Complaint are deemed admitted.

Commission staff testified that, during a previous proceeding, Respondent stated they were unaware of any outstanding compliance issues. However, review of the carrier's history shows Respondent received notice of all Commission actions either by certified mail return receipt, personal service, or email. This indicates that Respondent either willfully disregarded or ignored Commission orders when continuing to provide its services.

This is not the first instance of this carrier operating while out of compliance. We have given this carrier ample opportunity to correct issues and find their footing. However, Respondent has taken no initiative to improve operations. No representative appeared at this proceeding to testify on Respondent's behalf. We have no confidence that this carrier will operate within the scope of the law should they continue to hold a certificate of authority.

Neb. Rev. Stat. § 75-315 states that certificates may be revoked after notice and hearing for willful failure to comply with Nebraska statutes governing the Commission, any Commission rule or regulation, or any term, condition, or limitation of the Certificate. Additionally, under § 75-156 the Commission may, upon finding that the violation is proven by clear and convincing evidence, assess a civil penalty of up to ten thousand dollars per day against any person for each violation.

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Based on the evidence presented, the Commission finds that the complaint against Bus at the Yard, d/b/a Luxury Limousine, Lincoln, should be sustained. Luxury Limousine clearly and willfully violated § 75-309, the Commission's Orders, and rules and regulations when it completed the 49 trips, each a separate offense, while its Certificate of Public Convenience and Necessity was suspended. As a result, the Commission finds that the Certificate of Public Convenience and Necessity issue to Bus at the Yard, d/b/a Luxury Limousine should be revoked.

The Commission further finds that Bus at the Yard, d/b/a Luxury Limousine should be assessed a civil penalty. When determining the amount of a civil penalty, the Commission considers the appropriateness of the penalty in light of the gravity of the violation and the good faith of the violator to achieve compliance after notification of the violation.<sup>21</sup> We previously noted the unresponsiveness of Respondent to this Complaint and its allegations, and Respondent's failure to appear at the hearing after being provided notice by personal service. Operating without an active certificate of authority is a serious matter, as the Certificate provides assurance to the public that the carrier is in good standing with insurance and other safety regulations. Respondent willingly and knowingly operated outside of Commission authority.

After review of the evidence before us, the Commission finds that a civil penalty of twenty-six thousand three-hundred seventy-seven dollars and ninety-five cents (\$26,377.95) should be levied. This amount is equal to the grand total amount Respondent received for the 49 trips it conducted without an active certificate. Commission Rule of Procedure 007.06B requires any penalty assessed to be paid within thirty (30) days from the date the Order is mailed. Failure to pay the penalty may result in the matter being referred to the Nebraska Attorney General's office for collection through the District Court of Lancaster County.

### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motor carrier complaint against Bus at the Yard, d/b/a Luxury Limousine, Lincoln, be, and is hereby, sustained.

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<sup>21</sup> See Title 291 N.A.C. Ch. 1 §§ 007.02C1 and 007.02C2.

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IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity issued to Bus at the Yard, d/b/a Luxury Limousine be, and is hereby, revoked.

IT IS FINALLY ORDERED that Bus at the Yard, d/b/a Luxury Limousine be, and is hereby, assessed a civil penalty in the amount of twenty-six thousand, three-hundred seventy-seven dollars and ninety-five cents (\$26,377.96) to be paid within thirty (30) days from the mailing of this Order. Failure to pay this penalty within 30 days may result in the matter being referred to the Nebraska Attorney General's Office for collection through the District Court of Lancaster County.

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

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Deputy Director