

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Star)	APPLICATION NO. B-1259
Limousine, Inc., of Omaha,)	ORDER SUSPENDING AUTHORITY
Nebraska.)	
)	ENTERED: NOVEMBER 8, 2000

BY THE COMMISSION:

B A C K G R O U N D

By order entered October 23, 2000, the Commission ordered Star Limousine, Inc., (Star Limo) of Omaha, Nebraska to show cause why its certificate of public convenience and necessity should not be revoked. The Order was personally served on Star Limousine, Inc. on October 25, 2000. The matter came to be heard on October 31, 2000, at 1:30 p.m. in the Commission Hearing Room, Lincoln, Nebraska. Bradford Kistler entered an appearance for Star Limo and Shanicee Knutson appeared as legal counsel on behalf of the Commission staff.

E V I D E N C E

The Commission staff presented six witnesses who testified as follows:

Ms. Rose Watkins testified that she had contracted with Star Limousine, Inc. approximately a year in advance for the transportation service by limousine for her daughter's wedding on September 16, 2000. She testified that she had called to confirm the date with Star Limousine, Inc. to ensure that someone would be there to pick them up and take them to the church. She testified that Star Limo failed to show as promised. She testified that she contacted Star Limo several times that day and finally she had to find alternative transportation and leave for the wedding. She testified that she had not lost any money, however, the day was tarnished because of Star Limo's failure to show. She stated that she had filed a complaint with the Better Business Bureau. In that complaint, she stated that she wanted to ensure that this would not happen to anyone else.

Mr. Robert Wolf testified that his wife had contacted Star Limo about transportation services for their wedding day. He testified that his wife provided payment in advance in the amount of approximately four hundred and eighty dollars (\$480.00). He further testified that Star Limo failed to provide the transportation services as requested. He stated that Star had promised to credit his account back to him because of its failure to provide any of the requested limousine services. Mr. Wolf

further testified that he and his wife could not recover that payment through their credit card company. Mr. Wolf testified that he filed a complaint with the Commission on October 18, 2000, and that he would like Star Limo to refund the advance payment amount.

Mr. Kem Matthews, a customer of Star Limo, testified that he filed a complaint with the Better Business Bureau as well. According to Mr. Matthews, Star Limo did provide a limousine service, however, the service was unsatisfactory. He testified that Star Limo was twenty minutes late in picking them up initially and then argued with him about the payment method. He testified that the condition of the limousine was very poor. He testified that the temperature had been in the 90s that day and the limousine did not have a working air conditioner. Mr. Matthews further testified that Star Limo was late in picking them up for the return ride home. He stated that he just about took a taxi, when finally Star Limo appeared. He further testified that the driver did not believe him when he told the driver that he paid the first driver for the limousine service. He stated that he was charged twice for the same service. He has left approximately fifty messages with Star Limo because Star Limo never personally answered the telephone. He has requested credit numerous times and Star Limo never returned his messages.

Mr. John Schmidt, Rate Analyst for the Commission, testified that Star Limo's corporate status was dissolved in 1993. He testified that he just became aware of that dissolution a couple of weeks ago when he heard a news story about it. He testified that Star Limo should have filed an application changing its authority, or notified the Commission in writing about the dissolution. Moreover, Mr. Schmidt testified that Star Limo did not have a properly filed lease agreement on file with the Commission.

Mr. Robert Harrison, Commission Investigator, testified that Star Limo had violated a number of Commission rules and regulations. He further testified that Star Limo had cancelled its insurance with respect to one of its vehicles. Mr. Jeff Kaplan, he stated, had a PSC plate issued for that vehicle, and that he could be using that car without insurance. Mr. Harrison further stated that Star Limo's insurance company, Northland Insurance, had cancelled Star Limo's insurance policy. Mr. Harrison testified that by law, the insurance company had to give Mr. Kaplan sixty days to find an alternative insurance carrier. Thus, the cancellation becomes effective December 26, 2000.

Mr. Walter Fowler, owner of Luxor Limousine, testified that he had on one occasion witnessed Ms. Brandi Powley, Mr. Kaplan's child care provider and office assistant, drive children for Star Limo.

Application No. B-1259

Page 3

He testified that she did so in October of 2000. Mr. Fowler testified that Northland Insurance Company had a requirement that drivers must be twenty-five years or older in order to drive for his limousine company.

Mr. Harrison later testified that Ms. Powley did not have a valid driver's license in October and that she was under twenty years old when she drove for Star Limo.

Star Limo presented one witness, Mr. Jeff Kaplan, owner and president of Star Limo, who testified that he had not known that his corporate status had been dissolved and that he had revived it that afternoon by paying his overdue taxes on it. He presented a copy of the certificate of good standing as evidence. Mr. Kaplan further testified that he would pay back the money he owed to the complainants who did not receive service. He testified that he would reimburse the complainants within ten days to two weeks time. He further testified that he was aware of the complaint of Mr. Mike McCrillis, who lost money to the photographer on account of Star Limo's tardiness. Mr. Kaplan testified that he would return the PSC plate and file the lease agreements in the proper name pursuant to Commission rules and regulations. Mr. Kaplan made a commitment to the Commission that if he was permitted to continue operating he would keep his corporate status in good standing with the Nebraska Secretary of State. Mr. Kaplan further testified that the problems with the complainants in the past have been the result of his vehicles not properly working, leased cars which were repossessed by the owners, and a split of interoffice management. He stated that he would, in the future, use only two vehicles and keep them in good working order so that this situation does not happen again to the public.

On cross examination, Mr. Kaplan admitted to signing an affidavit affirming that he was aware of all Commission Motor Transportation Rules and Regulations. He stated that he did not call the complainants prior to the contracted times and dates because he did not know whether he would be able to make his commitments or not. He stated that his vehicle problems were day by day. He further testified that he did not know that the number of people calling to complain were not being responded to because he had assumed that his assistant, Ms. Powley, was calling them back. Mr. Kaplan admitted allowing Ms. Powley to drive for Star Limo without a license, but stated that this was on one occasion only. Mr. Kaplan further testified that he did not have a driver's license and that he had driven his limousines, and to the hearing on an expired license.

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

From the outset, the Commission expresses its concern for members of the public who have been harmed by Star Limo. The Commission understands that this harm extends beyond monetary loss. The Commission's action in this proceeding addresses that harm and aims at preventing further harm to the public.

A certificate of convenience and necessity issued by the Commission is subject to Neb. Rev. Stat. § 75-315 which states in pertinent part:

A permit or certificate may. . . be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any of the provisions of sections 75-101 to 75-801, with any lawful order, rule or regulation of the commission promulgated under such sections, or with any term, condition, or limitation of the permit or certificate. The Commission may, after notice and a hearing, suspend or revoke the permit or certificate of a motor carrier who refuses or subjects to any undue or unreasonable delay any pickup, delivery, or connecting line service, to any shipper, consignee, carrier or any other person or persons, at any point authorized to be service by such carrier. . .

The Commission issued the show cause order in this case because of a number of alleged violations with Commission rules and regulations. Upon consideration of all the evidence presented at hearing in this matter the Commission finds that the evidence supports the conclusion that Star Limo willfully violated Commission Motor Carrier rules and regulations. Among those rules the Commission finds that Star Limo has willfully violated section 010.01B which provides in pertinent part, that, "If a person applies for carriage and is willing to tender the fare, each operator shall convey such person to his or her destination." Although this section lists four exceptions to the general rule, none of which, we find, are applicable to this case. Mr. Kaplan testified that his reason for not tendering the service requested was, in part, due to the fact that he had only two vehicles in operation and that the vehicles used were in poor mechanical condition. The Commission finds this reason to be inadequate. Moreover, Star Limo could have taken a number of steps to mitigate the harm done to the public. Mr. Kaplan further admitted to knowing the requirement of informing the Commission of when an

equipment lease has been terminated and the requirement that PSC plates be returned when not in use. Yet, Star Limo disregarded those Commission requirements.

The Commission recognizes that willfulness pursuant to Neb. Rev. Stat. § 75-315 does not necessarily imply that Star Limo violated a rule or statute with bad intent. Nebraska State Railway Commission v. Resler, 154 Neb. 624, 629, 48 N.W.2d 718, 720-721 (1951). Willful has varied meanings which are dependent upon the nature and subject under discussion. Union Transfer Co. v. Bee Line Motor Freight, 150 Neb. 280, 284, 34 N.W.2d 363, 366 (1948). A failure to perform an act for a long period of time generally constitutes a willful nature to perform. Nebraska State Railway Commission v. Service Oil Co., 157 Neb. 712, 721-722, 61 N.W.2d 381, 387 (1953). For example, the Nebraska Supreme Court has previously held that a failure by a taxicab operator to use a certificate was "willful" although brought about by an accident to his cab, where that taxicab operator made no effort to procure a replacement cab. Safeway Cabs, Inc. v. Honer, 155 Neb. 418, 425, 52 N.W.2d 266, 271 (1952). In consideration of the evidence taken as a whole, the Commission opines that Star Limo did not just accidentally violate certain sections of the Commission's regulations. We believe, rather, that the evidence supports the finding in this case that Star Limo willfully violated Commission rules and regulations, and has harmed the general public by its actions and omissions.

It should be further noted that in the Commission Order entered December 1, 1998, granting Star Limo authority to provide limousine service, the Commission ordered Star Limo to "render reasonably continuous and adequate service to the public pursuant to the authority authorized." To date, the Commission has received eleven service complaints against Star Limo within the past six weeks, only seven of which were made known to Star Limo and were presented for consideration in this hearing. The Commission finds that the evidence presented by each of the seven complaints sufficiently demonstrates that Star Limo has not provided continuous and adequate service pursuant to that Commission order.

Therefore, we find that Star Limo's certificate of public convenience and necessity should be immediately suspended until Star Limo has demonstrated that it has the ability to comply with Commission rules and regulations. The Commission finds that a suspension is warranted until the four following conditions are fully satisfied:

1. Star Limo must provide restitution to the various

complainants as set forth herein.

2. Star Limo must demonstrate that it has adequate insurance coverage through an alternative insurance provider.
3. All vehicles Star Limo uses must pass periodic motor vehicle inspections on dates to be determined at the discretion of the Commission.
4. Star Limo must post a bond to the Commission to cover any further complaints as set forth herein.

These conditions are further explained in the following paragraphs.

At the hearing Star Limo committed to paying restitution to the various complainants, who paid for services they did not receive. Mr. Kaplan promised he would reimburse Mr. Robert Wolf, Ms. Kristen McNulty and Mr. Chris Perkins as well as other individuals who were charged for limousine service they did not receive. Mr. Kaplan also stated that he would reimburse Mr. Kem Matthews who was double-charged. The Commission will hold Star Limo to those promises. We further find that Mr. Mike McCrillis should be reimbursed for the extra fee he paid to the photographer as a result of Star Limo's tardiness. As a condition to the lifting of the suspension, Star Limo must demonstrate by documented proof to the Commission that it has paid each of the complainants restitution for amounts the complainants lost.

As another condition to lifting the suspension imposed by this Order, the Commission will require all of Star Limo's vehicles to pass periodic motor vehicle inspections on dates to be determined by the Commission. Star Limo must make its vehicles available for inspection and must affirmatively cause the results of each inspection to be submitted to the Commission for approval.

Moreover, any potential difficulties with meeting scheduled transportation obligations in a timely manner on account of mechanical problems should be made known to the customer in advance of the reserved time and date. Should Star Limo experience significant problems meeting its transportation commitments in the future, Star Limo shall notify, the Commission of its difficulties and the reasons therefor.

As evidenced at hearing, Star Limo's insurance policy was cancelled at the request of the insurer. Before Star Limo will be permitted to continue operations, it must demonstrate that it has found an alternative insurance provider and adequate insurance coverage before the suspension will be lifted.

Application No. B-1259

Page 7

Finally, the Commission will require Star Limo to post a bond of Five Thousand dollars (\$5,000) for one hundred and twenty (120) days to cover any further complaints from consumers who paid for services not rendered by Star Limo. Customers of Star Limo coming forward to the Commission after the entry of this Order will be permitted recover amount(s) lost upon notice by the Commission to Star Limo and after the Commission has made a finding that restitution should be paid to the consumer.

Star Limo has ninety days to provide the Commission with documented proof that all conditions imposed by this Order have been satisfied. The Commission will reopen this matter ninety (90) days from the date which this Order is entered to determine which of the preceding conditions have been met and to consider what further action the Commission should take with respect to the conditions which have not been fully satisfied. Until Star Limo meets all requirements, Star Limo shall cease and desist operations effective the date of this Order.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the authority granted to Star Limousine, Inc., be and it is hereby, suspended.

IT IS FURTHER ORDERED that Star Limousine, Inc. cease and desist operations until such time as the Commission enters an order acknowledging proof that the four conditions set forth above have been satisfactorily met.

IT IS FURTHER ORDERED that in approximately ninety (90) days from the date this Order is entered, the Commission shall reopen this matter to determine whether the four conditions set forth above have been satisfactorily met. If the Commission determines that all conditions have not been satisfied, the Commission reserves the right to take any action it deems appropriate up to and including full revocation of Star Limousine, Inc.'s certificate of public convenience and necessity.

IT IS FINALLY ORDERED that any further violation of Neb. Rev. Stat. §§ 75-101 to 75-801, Commission rules and regulations or Commission order, shall be deemed a willful violation subjecting Star Limousine's certificate of public convenience and necessity to further suspension, change, or revocation.

Application No. B-1259

Page 8

MADE AND ENTERED this 8th day of November, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Larry Johnson

Tod Johnson

//s//Anne C. Boyle

//s//Daniel G. Urwiller

Anne Boyle
Vice Chairman

ATTEST:

And S. Pollack
Executive Director