

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	Application No. B-1554
of DJW, Inc., d/b/a Luxury)	Supplement 4
Limousine, Syracuse, seeking)	
authority for the transportation)	
of passengers as a limousine)	Order Granting Motion to
service between points in)	Reconsider and Partially
Lancaster County and between)	Vacating Previous Order
points within such county on the)	
one hand and, on the other hand,)	
points in Nebraska over)	
irregular routes.)	Entered: January 3, 2006

BY THE HEARING OFFICER:

On June 3, 2005, an application was filed with the Public Service Commission (Commission) by DJW Inc., d/b/a Luxury Limousine Service (Applicant) seeking authority as a passenger carrier pursuant to Neb. Rev. Stat. Section 75-310. Protests were timely filed by VIP Limousine, A-1 Limousine and Omaha Limousine (Protestant).

A planning conference was held on September 15, 2005 and a planning conference order and notice of hearing was issued by the Hearing Officer on September 21, 2005. Pursuant to the planning conference order, both Applicant and Protestant were ordered to submit witness lists to each other and the Commission by November 30, 2005. A hearing was held on December 7, 2005.

At the December 7, 2005 hearing, Applicant was represented by Gerald Stilmock, and Protestant was represented by Jack Shultz. At the commencement of the Protestant's case, Mr. Shultz, called his first witness, Mr. William Alford. Mr. Stilmock objected to Mr. Alford's testimony on the grounds that he had not received a witness list from the Protestant as ordered under the planning conference order. Mr. Shultz stated that he had not received a copy of the planning conference order, and therefore had no notice of the November 30 deadline for submitting a witness list to the Applicant and the Commission. The hearing officer allowed the direct testimony, withholding judgment on the objection until a later date. Mr. Stilmock objected to Protestant's second witness, Dennis Wagner, on the same grounds and requested that the testimony of both witnesses be struck from the record. Mr. Stilmock did not cross-examine either witness during the hearing.

A Hearing Officer's order was issued on December 12, 2005 overruling the Applicant's objection and motion to strike the Protestant witness testimony. Further, the order gave the Applicant seven days to notify the Commission of the Applicant's desire to cross-examine the Protestant witnesses. Applicant

filed written notice with the Commission of Applicant's desire to cross-examine the Protestant witnesses on December 16, 2005. Subsequently, the Protestant filed a motion to reconsider the Hearing Officer decision to allow the Applicant to cross-examine the Protestant witnesses and requested oral argument on the issue. Applicant submitted a response to Protestant's motion that was received by the Commission on December ??, 2005.

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

Further examination of the record indicates that the Applicant submitted a witness list to the Commission on November 30, 2005. Included on the list of possible witnesses the Applicant might call were William Alford and Dennis Wagner, the witnesses later called by Protestant's counsel and objected to by the Applicant. For this reason, while the Applicant may not have had notice the Protestant planned on calling Mr. Alford and Mr. Wagner, the Applicant can not now legitimately argue that it was unduly surprised.

It was in the interest of fairness to all parties in this matter that I originally decided to allow the Applicant another opportunity to cross-examine the Protestant witnesses. However, upon further consideration, I find I should vacate that portion of my earlier decision and further find that no more testimony shall be taken into the record on this matter. I find the testimony of Mr. Alford and Mr. Wagner shall remain on the record.

Protestant has requested an opportunity to present oral argument on this issue. It is within the discretion of the Hearing Officer under 291 Neb. Admin. Code, Chapter 1, Section 018.04 to permit oral arguments. I find that no oral argument should be allowed on this issue.

O R D E R

IT IS THEREFORE ORDERED that the previous Hearing Officer's order allowing cross-examination of Protestant witnesses by the Applicant is hereby vacated and that no more testimony will be taken on this matter.

IT IS FURTHER ORDERED that the Protestant's request for oral argument is denied.

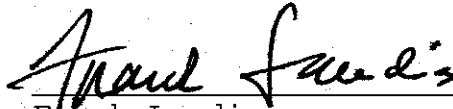
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MADE AND ENTERED in Lincoln, Nebraska on this 3rd day of
January, 2006.

BY:



Frank Landis

HEARING OFFICER

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