

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Mark J.)	APPLICATION NO. MCC-3180
Breiner, Director of the)	
Motor Transportation)	
Department of the Nebraska)	
Public Service Commission,)	
)	
Complainant)	ORDER SUSTAINING COMPLAINT
)	
v.)	
)	
Limousine Services, LLC,)	
)	
Omaha)	
)	
Defendant.)	ENTERED: JANUARY 23, 2013

APPEARANCES:

For the Commission:

Mark Breiner
1200 N Street, Suite 300
Lincoln, NE 68508

BY THE COMMISSION:

This matter came before the Commission upon the filing of a formal complaint against Limousine Services, Inc., Omaha, Nebraska, filed on November 2, 2012. The defendant filed an Answer to the Complaint on November 21, 2012 (Exhibit 4). Notice of this hearing was sent to all parties of record on December 20, 2012 (Exhibit 1), and a hearing was held on the matter on January 15, 2013.

The hearing on January 15, 2013, was not attended by any representative of the defendant, Limousine Services. One of the owners of Limousine Services, Jim Campin, informed Commission staff that no representative of the company would be able to be present at the hearing.

EVIDENCE

Robert Harrison was called to testify. Mr. Harrison is an investigator for the Commission and has been in that position

for twenty-three years. As part of his duties, he investigates complaints of illegal activity that are received by the Transportation Department. In the first part of May, 2012, Mr. Harrison testified that he received a contact regarding usage of vehicles by Limousine Services at the Berkshire Hathaway event being held at that time in Omaha.

Mr. Harrison saw, among other vehicles, a black limousine that appeared to be one that was operated by Limousine Services. He asked the driver who he worked for and was told that it was Emerald Limousine. The driver then went into a building and returned with Tom Schmidt. Mr. Schmidt, who is an owner of Emerald Limousine and Limousine Services, said that the vehicle was a Limousine Services vehicle. The vehicle did not have a PSC plate attached to it, but one had been applied for but not yet received. Mr. Harrison did confirm that this was correct.

Mr. Harrison inquired as to whether Limousine Services was using other vehicles in service for the Berkshire event. Mr. Schmidt initially said no, but then later admitted that they had rented two sedans from Enterprise for the weekend. Neither of the vehicles had been registered with the Commission nor had PSC plates. Mr. Schmidt said that they had purchased insurance through Enterprise and had not informed their own insurance company that the vehicles were being operated by Limousine Services.

Mr. Harrison advised that he was going to Enterprise to conduct further inquiries. At this time Mr. Schmidt then admitted that he had been lying to both Mr. Harrison and Mr. Breiner regarding the use of vehicles, including SUVs, by his company. He admitted that his company had, in fact, rented five vehicles, including two sedans and three SUVs. Mr. Schmidt stated they had reserved five black sedans, but that when they went to Enterprise to pick up the vehicles they were only given two black sedans and offered either black SUVs or sedans of other colors. The company chose to use the black SUVs rather than the other sedans. The company believed that they needed to do this in order to provide service to the client that they had committed to, rather than to not provide the service or to send the business to another company.

Mr. Harrison advised Mr. Schmidt not to use the vehicles. He then proceeded to Enterprise to gather additional information. At Enterprise, Mr. Harrison talked with the manager of the Enterprise location, Mr. Klecic. He confirmed

that Mr. Schmidt had rented the vehicles and provided paperwork for the transactions (Exhibit 2). He confirmed Mr. Schmidt's story that five black sedans had been reserved and that only two were made available. He also related to Mr. Harrison that he had offered other sedans to Mr. Schmidt, but as they were not black, Mr. Schmidt chose to use the black SUVs.

Mr. Harrison reviewed the rate sheets the Department had secured from the Defendant during the investigation of this issue (Exhibit 3). The rate sheets appear to show that Limousine Services had charged an amount not approved by the Commission. The billing documents showed that the Defendant had gross revenues for the vehicles of \$7,491.60.

Mr. Harrison reviewed the Defendant's Certificate of Authority. He noted that the Certificate allows for the use of luxury limousines. This has been interpreted by the Commission as not allowing for the use of vehicles such as the SUVs used by the Defendant in this matter.

Mr. Harrison summarized that the Defendant did not have leases on file with the Commission for the vehicles they had leased for the Berkshire event; that the vehicles did not have affixed PSC plates as required by statute and regulation; that they did not have proper insurance applicable to the vehicles; and that no identification cards were present in the vehicles as required by regulation. Mr. Harrison said that there were six such violations.

Mr. Breiner reviewed the letter submitted by the Defendant as an Answer to the Complaint. The Answer was received into evidence as Exhibit 4.

On examination by Commissioner Boyle, it was noted that there were several discrepancies regarding the billing documents. It appears there was initially a rate that was not part of their approved rate filing, as well as several discounts and other fees. While noting that these fee issues were not part of this investigation, she said that the documents were bothersome and that it needs to be investigated.

Commissioner Landis said that the rate issue also needs to be investigated. Commissioner Landis also inquired as to whether there could be a better system put in place to assist certificated carriers during times like the Berkshire event when the carrier needs to increase its fleet size temporarily.

PUBLIC TESTIMONY

Mr. Bill Alford testified as a member of the general public. Mr. Alford is the owner of VIP Limousine in Omaha. He stated that he hopes the Commission will treat this matter seriously. He noted that the Defendant was owned by two individuals, Jim Campin and Thomas Schmidt, who used to work for VIP Limousine. He said that they had specifically targeted his company in a couple of different ways. They had held meetings with some of his employees. He said Mr. Campin and Mr. Schmidt had encouraged his drivers to be non-cooperative by calling in sick, and refusing or missing runs in an effort to hurt Mr. Alford's business. They also specifically targeted some of VIP's client list, including the client that was being served by the vehicles in this matter. These things were all done in an effort to disrupt and damage his business.

Mr. Alford said he had rented fifteen vans for the weekend. The activities conducted by the Defendant caused him to lose business and his drivers to lose income. He had to cancel runs due to the direct contact by the Defendant and his use of lowered fees in trying to obtain the business. Mr. Alford said he did not experience any turned down trips during this time period, and in fact had excess capacity during the event, in part due to the activities of the Defendant.

Mr. Alford said that the Defendant should not be allowed to profit from his illegal activity, and that it should be fined heavily for these activities.

OPINION AND FINDINGS

This matter is before the Commission on the basis of an allegation that the Defendant was using vehicles in its operations that were not properly registered with the Commission, that the leases for the vehicles were not on file with the Commission, that did not have PSC plates affixed pursuant to Commission rule and regulations, and did not have the proper identification cards as required by said rules and regulations.

The applicable rules are as follows:

004.01 Annual Fees: An annual fee of twenty-five dollars for each motor vehicle operated or forty dollars for each truck-trailer or tractor-trailer combination as provided by Section

75-305, R.R.S. 1943, is due and payable by every carrier subject to Commission jurisdiction on the first day of January each year, and is delinquent on the first day of March each year.

004.02 Identification Cards: The following provisions concerning identification cards apply to all motor carriers:

004.02A Issuance: The Commission shall issue annually, without charge an identification card for each motor vehicle, upon payment of an annual fee, and upon compliance with all statutory requirements and rules and regulations of the Commission. The card will contain the certificate or permit number, the name and address of the holder, and other information as the Commission may require. Upon replacement or addition of any vehicle, a new identification card will be obtained by the motor carrier by application to the Commission and the previously issued card will be surrendered to the Commission.

004.02B Display: No motor vehicle subject to Commission jurisdiction will be operated without an identification card, protected from defacement, in the driver's cab.

004.03B Display: No vehicle will be operated without the secure attachment of its PSC plate in the following manner:

004.03B1 On passenger carrying units at the rear of the vehicle, and easily legible from the rear.

004.03B2 On power units on any portion of the front part, preferably to the regular vehicle license so as to be easily read from the front.

004.03B3 On straight trucks and vehicles with no more than two axles on either the front or rear so as to be easily legible.

008.02 Leasing Equipment: Common or contract carriers may lease equipment which they do not own to augment their existing equipment, other than that exchanged between motor carriers in interchange service, only under the following conditions:

008.02A Each lease for the use of equipment shall:

008.02A1 Be made between the lessor and lessee;

008.02A2 Be in writing and signed by the parties thereto, or their duly authorized agents;

008.02A3 Specify the period for which the lease applies; and the time, date, or circumstance on which the lease begins and

ends, the duration of which will coincide with the time for giving receipts for the equipment, as required by 008.02B;

008.02A4 Specify the compensation to be paid by the lessee for the equipment;

008.02A5 Provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of responsibility in respect thereto, by the lessee for the duration of the lease;

008.02A6 Notwithstanding the provision of 008.02A5, a common or contract carrier lessee of equipment may subsequently lease that leased equipment to another common or contract carrier without being in violation of these rules if the subsequent lease also conforms to the provisions of 008.02;

008.02A7 Provide that the lessee shall be responsible for carrying the insurance required by the NPSC notwithstanding any agreement between the parties that the lessor shall hold the lessee harmless and provide certain insurance covering the lessee;

008.02A8 Be approved by the Commission;

008.02A9 Be executed in quadruplicate, with all copies filed with the Commission to be stamped for approval; one copy will be retained by the Commission and the other three returned to the lessee; the lessee shall: retain one copy for itself, carry one copy on the equipment and send the remaining copy to the lessor for retention.

008.02B When possession of equipment is taken by lessee, the lessee shall give to the lessor a receipt specifically identifying the equipment and stating the date and time of day possession thereof is taken. When the possession by the lessee ends, the lessee shall obtain from the lessor a receipt specifically identifying the equipment and stating the date and time of day possession thereof is taken.

010.02I Both taxicabs and limousines shall be operated with a PSC plate attached to each vehicle in compliance with 004.03B1.

The defendant involved has been shown to be in violation of these rules regarding the operations as set forth above. Of particular concern for the Commission is the fact that the vehicles operated by the Defendant may not have been covered by adequate insurance due to the failure to follow Commission rules and regulations.

The Defendant's Answer in Exhibit 4 is an admission that it had violated Commission rules and regulations. The Answer further was an admission that the Defendant "had no idea they were in violation" of the rules. It was further said in the Answer by Mr. Campin that he "could have read the PSC Rules book, but it is a mile thick and I could never retain all of what it says nor would about anybody." The Commission notes that sworn affidavits are received by the Commission in applications for authority that state that a person is "familiar with and will conform with the Nebraska statutes governing motor carries and with the Commission's rules and regulations thereunder", including such an affidavit from Mr. Campin. The Defendant should have known the rules and regulations that apply, or could have called the Transportation Department if they had any questions.

The Commission finds that the defendant did violate Commission Rules and Regulations regarding their operations in this matter. After consideration of the matter, the Commission finds that a civil penalty of \$1000 is warranted. The Commission notes that this is the first time that this Defendant has been before the Commission on a Motor Carrier Complaint. Any future violations of these rules brought to the Commission and proven in a civil proceeding before it will be dealt with more severely.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Motor Carrier Complaint No. 3180 filed against Limousine Services, LLC, Omaha, Nebraska, be, and it is hereby, sustained.

IT IS FINALLY ORDERED that Limousine Services, LLC, be, and is hereby assessed a civil penalty in the amount of One Thousand Dollars (\$1000.00) for violations of Nebraska Public Service Commission Rules.

MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of
January, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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//s//Anne C. Boyle
//s//Frank E. Landis