

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In re Application TC-110733 of)	DOCKET TC-110733
)	
EXCALIBUR LIMOUSINE LLC)	ORDER 02
d/b/a SEATTLE GREEN LIMO)	
)	
For a Certificate of Public Convenience)	FINAL ORDER DENYING MOTION
and Necessity to Operate Motor)	TO VACATE DEFAULT AND
Vehicles in Furnishing Passenger and)	DISMISSAL OF APPLICATION
Express Service as an Auto)	WITHOUT PREJUDICE TO REFILE
Transportation Company)	
.....)	

BACKGROUND

- 1 On April 26, 2011, Excalibur Limousine LLC, d/b/a Seattle Green Limo (Excalibur) filed an application with the Washington Utilities and Transportation Commission (Commission) for an auto transportation or bus certificate (Application).¹ Excalibur seeks to provide passenger service by reservation only between all hotels in King County and Piers 66 and 91 in Seattle, excluding hotels within the City of Tukwila and within a 3-mile radius of Seattle-Tacoma International Airport. The Commission published Notice of the Application in the Commission’s weekly transportation Docket of June 7, 2011.

- 2 On July 7, 2011, Shuttle Express, Inc. (Shuttle Express) filed a protest to the Application. Shuttle Express contends that it already provides satisfactory service along the route for which Excalibur seeks authority. Shuttle Express also questioned Excalibur’s fitness, willingness, and ability to provide the proposed service.

- 3 Due to the protest filed by Shuttle Express, the Commission scheduled a prehearing conference to address the Application. Consistent with its practice, the Commission consulted with the parties on an appropriate date before scheduling the prehearing

¹ A bus certificate is formally referred to in RCW 81.68 as a Certificate of Public Convenience and Necessity to Operate Motor Vehicles in Furnishing Passenger and Express Service as an Auto Transportation Company.

conference. Kevin Williams on behalf of Excalibur responded to the initial email requesting party input by asking for a copy of the protest filed by Shuttle Express which the Commission provided to him, but he did not indicate his availability for any of the proposed dates for the prehearing conference or respond to a subsequent email again asking for this information. The Commission selected a date that was convenient for the other parties, served a copy of the Notice of Prehearing Conference on all parties by mail, and provided a courtesy electronic copy of the Notice to all parties via email.

4 The Commission convened the prehearing conference in this docket at the Commission's headquarters in Olympia, Washington on August 3, 2011, before Administrative Law Judge Adam E. Torem. John D. Rowley, Jr., Seattle, Washington, appeared on behalf of Shuttle Express *pro se*. Greg Trautman, Assistant Attorney General, Olympia, Washington, appeared for the Commission's regulatory staff ("Commission Staff" or "Staff").² No representative appeared for Excalibur.

5 Shuttle Express moved for Excalibur to be held in default for failure to appear at the prehearing conference. Commission Staff, however, contended that Shuttle Express lacked standing to bring a protest or participate in this proceeding because the territory in Shuttle Express' existing certificate of authority (C-975) does not include the route Excalibur seeking authority to serve. Shuttle Express disagreed with Commission Staff's interpretation of its certificate C-975 and noted that Shuttle Express has filed a tariff and is already providing service to the cruise ship piers.

6 On August 9, 2011, Shuttle Express filed an application for extension of its certificate to include passenger service between all points in King County and Seattle waterfront terminals, with certain exceptions. That application is pending in Docket TC-111446.

7 On August 10, 2011, the Commission entered Order 01 in this docket, finding in accordance with RCW 34.05.440 and WAC 480-07-450 that Kevin Williams and

² In formal proceedings, such as, this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

Excalibur are in default for failure to appear at the prehearing conference and dismissing the Application.

- 8 On August 22, 2011, Kevin Williams filed a motion under WAC 480-07-450 requesting that Order 01 be vacated and the proceeding be reopened for further process (Motion). Mr. Williams contends that due to his pre-occupation with family medical issues and because he provided the Commission with the wrong email address, he was not aware of the prehearing conference. He apologizes and asks that the Commission consider these to be extenuating circumstances supporting vacating the default and dismissal of the Application, particularly in conjunction with Shuttle Express' lack of standing to protest the Application.

DISCUSSION AND DECISION

- 9 The Commission denies the motion and concludes that Order 01 appropriately found Kevin Williams and Excalibur in default. The Commission sympathizes with Mr. Williams' family issues, but the Commission expects companies seeking to provide service subject to the Commission's jurisdiction to cooperate with the Commission in processing their applications for a certificate of authority. Excalibur failed to do so.
- 10 Mr. Williams concedes that he received the Commission email informing him that Shuttle Express had protested the Application and that the Commission was scheduling a prehearing conference to address the issues raised in that protest. Mr. Williams states in the Motion, "As my mother was being admitted to the hospice program at this time I determined it best to wait and see what her condition would require before replying, supposing that the date as late as August 19th would probably be the best of the suggested times." Mr. Williams thus knew of the family medical situation at the time the Commission contacted him about scheduling the prehearing conference, but he did not inform the Commission or the parties of this situation or his suppositions. According, the Commission scheduled and conducted a prehearing conference at which Excalibur failed to appear.
- 11 The Commission makes every effort to accommodate parties' special circumstances, but the Commission cannot accommodate circumstances of which it is not aware. It was incumbent on Mr. Williams to apprise the Commission of his family medical situation in response to the Commission's initial or subsequent inquiries on scheduling the prehearing conference or at some other point *before* the prehearing conference. His failure to do so resulted in a waste of Commission and party time and resources. The Commission accepts Mr. Williams' apology but concludes that

the entirety of the circumstances presented in this case do not warrant vacating the order of default.

- 12 The Commission, however, is troubled by Shuttle Express' actions. That company protested the Application based on Shuttle Express' representation that it is already satisfactorily providing the service Excalibur seeks authority to provide, yet Shuttle Express filed its own application for authority to provide that service on August 9, 2011, one month after Shuttle Express filed its protest. Based on the facts known to the Commission at this time, Shuttle Express either is misrepresenting the services it currently provides or is providing a service subject to Commission jurisdiction without the authority to do so. Either scenario is unacceptable. The Commission expects Staff to investigate these circumstances as part of its fitness review of Shuttle Express' application in Docket TC-111446.
- 13 The Commission nevertheless will dismiss the Application. Such dismissal, however, is without prejudice to Excalibur refiling an application to provide the requested service. We note that pursuant to WAC 480-30-131(1), if Excalibur makes such a filing no later than September 8, 2011, the Commission may consolidate its consideration of that application with the Shuttle Express application in Docket TC-111446. As provided in WAC 480-30-131(2), however, if Excalibur files an application for authority that overlaps Shuttle Express' application after September 8, 2011, the Commission will consider the Excalibur application only after rendering a decision in Docket TC-111446.

ORDER

THE COMMISSION ORDERS THAT:

- 14 (1) Kevin Williams and Excalibur Limousine LLC are held in default due to failure to appear at the prehearing conference without previously notifying the Commission of any extenuating circumstances that might affect the Company's participation in this proceeding.

- 15 (2) The application filed by Kevin Williams and Excalibur Limousine LLC is dismissed without prejudice to refile at a future date.

DATED at Olympia, Washington, and effective August 31, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

JEFFREY D. GOLTZ, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.