

May 3, 2017

Steven V. King, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P. O. Box 47250
Olympia, Washington 98504-7250

RE: *In re Application of Go VIP LLC d/b/a Go VIP Seattle for a Permit to Operate as a Charter/Excursion Carrier*
Docket TE-161295

Dear Mr. King:

On April 27, 2017, a week after the hearing in this matter, Go VIP, LLC's (Go VIP) owner and operator, Steve Valentinetti, emailed Administrative Law Judge (ALJ) Rayne Pearson and Commission Staff to provide allegations and argument in addition to that offered at hearing. In the attachment to his email, Mr. Valentinetti claims that (1) Staff impermissibly discriminated against Go VIP, (2) his companies did not commit the violations that FMCSA found, (3) FMCSA never had jurisdiction over his companies, (4) he never had a chance to contest the FMCSA violations, and (5) he did not have adequate time to prepare for the hearing. Staff, pursuant to a notice issued on April 27, 2017, by ALJ Pearson, hereby submits its response to Mr. Valentinetti's allegations and argument.

Mr. Valentinetti first claims that Staff's recommendation that the Commission deny Go VIP's application constituted a "retaliatory, racial attack" and a part of a "cover-up." The Commission should reject these allegations, for four reasons.

First, Mr. Valentinetti fails to make any evidentiary showing on the basic elements of a discrimination claim. *Cf. Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 362, 753 P.2d 517 (1988). Mr. Valentinetti fails to show that he or any of his employees are members of a protected class. Mr. Valentinetti also fails to show that discrimination was somehow a factor in Staff's recommendation. For example, Mr. Valentinetti did not show that Staff should have recommended his application for approval,¹ or that Staff has recommended approval for other applicants with similar regulatory histories, both of which

¹ Indeed, Staff contends that Mr. Valentinetti could not make this particular showing. As discussed below, Mr. Valentinetti's negative regulatory history was an established fact and Staff, by statute and regulation, had to consider that fact when evaluating Go VIP's application. *See* RCW 81.70.230(2); WAC 480-30-121.

would raise the inference that discrimination played a role in the denial of Go VIP's application. Without those showings, the Commission should not, and cannot, credit Mr. Valentinetti's allegations.

Second, Mr. Valentinetti's baffling claims of cover-up and retaliation suffer from similar evidentiary defects. Mr. Valentinetti fails to show that he engaged in protected activity or explain why Staff would have retaliated against him such that it was a substantial factor in Staff's recommendation. *Cf. Kahn v. Salerno*, 90 Wn. App. 110, 128-30, 951 P.2d 321 (1998). Similarly, he fails to explain what Staff is covering up by recommending that the Commission deny Go VIP's application and how that recommendation advances the cover-up.

Third, Mr. Valentinetti fails to show impropriety with regard to the presence and argument of an AAG at the hearing in this matter, for two reasons. First, Mr. Valentinetti mischaracterizes the AAG's participation in this matter. Aside from mover's court, an AAG from the Attorney General's Office's Utilities and Transportation Commission Division represents Staff at all contested proceedings. *E.g., In re Application of Rainier Moving Company, LLC for a Permit to Operate as a Motor Carrier of Household Goods*, Docket Number TV-160323, Order 01, at ¶ 13 (July 12, 2016) (AAG present at hearing after the Commission issued a notice of intent to deny an application). The presence of the undersigned AAG at the hearing on Go VIP's application was routine and signified nothing. Second, as discussed below, Mr. Valentinetti's history of regulatory non-compliance was established at the time of hearing. Given that history, the undersigned AAG properly invoked the doctrine of collateral estoppel to prevent the impermissible re-litigation of matters already decided. Indeed, the undersigned AAG's duty to represent Staff essentially mandated that course of action. *See* RPC 1.1, 1.3 cmt. 1.

Fourth, Mr. Valentinetti fails to make any credible showing of impropriety with regard to the involvement of David Pratt, John Foster, and Betty Young in this matter. Mr. Valentinetti's allegations consists of unsworn hearsay and Staff denies them. Regardless, even if the Commission assumes the truth of the allegations, Mr. Perkinson determined that Staff should recommend denying Go VIP's application after his investigation, and Mr. Valentinetti fails to show that Mr. Pratt, Mr. Foster, or Ms. Young had any influence on that recommendation. Mr. Valentinetti's allegations are irrelevant to the matter before the Commission. *Cf. City of Vancouver v. Pub. Employment Relations Comm'n*, 180 Wn. App. 333, 351-58, 325 P.3d 213 (2014).

Mr. Valentinetti next addresses his companies' histories of violations with the Federal Motor Carrier Safety Administration (FMCSA). Mr. Valentinetti contends that his companies committed none of the violations found by FMCSA and argues that he has been prevented from rebutting FMCSA's findings. Staff wishes to make two points about these claims.

First, as Staff contended at hearing, Mr. Valentinetti's previous companies *unquestionably* have a history of non-compliance with relevant safety regulations. The record here contains FMCSA's safety audits of those companies and snapshots of the FMCSA portal showing that FMCSA ordered both companies out of service due to unsatisfactory safety ratings. Those orders are final. *See In re AMI Coaches LLC*, US DOT No. 2351390, Docket Number FMCSA-2015-0110 (W. Serv. Ctr.), Final Order on Petition for Review of Denial of Upgrade of Safety Rating, at 11 (Dec. 2, 2015) (noting that AMI Coaches never challenged the violations or the unsatisfactory safety rating); *In re Airline Shuttle Inc.*, US DOT No. 2158025, Docket Number FMCSA-2014-0414 (W. Serv. Ctr.), Final Order on Petition for Review of Unsatisfactory Safety Rating (Dec. 11, 2014) (denying review of unsatisfactory safety rating). Staff asks the Commission to give Mr. Valentinetti's allegations the appropriate weight in light of the record at hearing, which contradicts his central arguments.

Second, Mr. Valentinetti misunderstands just what he had the opportunity to contest at the hearing in this matter. As an example, when Staff recommends denying a household goods permit because the applicant has a criminal history, it must only present evidence of the conviction, not that the applicant committed every element of the offense of conviction. Similarly, here Staff simply needed to show that Mr. Valentinetti's companies had a history of non-compliance, not that he committed every offense resulting in that history of non-compliance. Staff made its showing by producing the out-of-service orders in effect against Mr. Valentinetti's companies, and Mr. Valentinetti was limited to contesting the existence of those out-of-service orders. He simply could not credibly do so in light of the record at hearing.

Relatedly, Mr. Valentinetti attempts to relitigate the FMCSA out-of-service orders against his former companies by claiming that FMCSA never had jurisdiction over them. In support of this argument, he claims that Staff witness Mat Perkinson agreed with him at hearing. The transcript proves that argument false: Mr. Perkinson did not offer any opinion as to FMCSA's jurisdiction over Mr. Valentinetti's companies. Regardless, a United States Department of Transportation ALJ has already determined that FMCSA had jurisdiction over Mr. Valentinetti's companies. *E.g., In re Airline Shuttle, Inc., US DOT No. 2158025*, Docket Number FMCSA-2014-0389 (W. Serv. Ctr.), Order Denying the Respondent's Cross-Motion for Summary Judgment, at 12-23 (July 27, 2016) (rejecting Mr. Valentinetti's jurisdictional arguments).

Mr. Valentinetti also contends that he has "never been given an opportunity" to dispute the violations found by FMCSA. The safety audits in the record prove this allegation false: they provide that Mr. Valentinetti had the opportunity to challenge the violations by submitting evidence to FMCSA. Mr. Valentinetti simply failed to do so, or failed to timely do so. *See In re AMI Coaches LLC*, US DOT No. 2351390, Docket Number FMCSA-2015-0110 (W. Serv. Ctr.), Final Order on Petition for Review of Denial of Upgrade of Safety

Steven V. King
May 3, 2017
Page 4 of 4

Rating, at 11 (Dec. 2, 2015) (AMI Coaches never challenged the violations or the unsatisfactory safety rating); *In re Airline Shuttle Inc.*, US DOT No. 2158025, Docket Number FMCSA-2014-0414 (W. Serv. Ctr.), Final Order on Petition for Review of Unsatisfactory Safety Rating (Dec. 11, 2014) (denying review of unsatisfactory safety rating for failure to make a timely challenge).²

Finally, Mr. Valentinetti appears to argue that he had insufficient time to prepare for the hearing. Mr. Valentinetti repeatedly asked for a hearing as quickly as possible when speaking with the undersigned AAG, a desire passed along to the Commission. Mr. Valentinetti was given a choice of hearing date and chose April 20, 2017. He cannot complain about insufficient time to prepare.

The record developed at hearing supports Staff's recommendation in this matter. Mr. Valentinetti's companies have a history of regulatory non-compliance that makes Go VIP unfit for operating authority as a charter and excursion company. Further, Go VIP appears to be a reincarnation of companies ordered out of service by FMCSA, something Mr. Valentinetti essentially admitted to at hearing. Staff asks the Commission to deny Go VIP's application.

Sincerely,

/s/ Jeff Roberson, WSBA No. 45550
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cc: Rayne Pearson, Administrative Law Judge
Mr. Steve Valentinetti, Go VIP

² Staff notes that Mr. Valentinetti's companies had, independent of any appeal of the proposed safety rating, the chance to improve their unsatisfactory safety ratings by submitting an acceptable safety plan. Mr. Valentinetti failed to do so. E.g., *In re AMI Coaches LLC*, US DOT No. 2351390, Docket Number FMCSA-2015-0110 (W. Serv. Ctr.), Final Order on Petition for Review of Denial of Upgrade of Safety Rating, at 11 (Dec. 2, 2015) (denying petition for administrative review based on Mr. Valentinetti's failure to submit an acceptable corrective action plan).