

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the Proper	)	DOCKET TE-151667
Carrier Classification of, and Complaint)	
for Penalties against:	)	ORDER 02
)	
	)	INITIAL ORDER CLASSIFYING
	)	RESPONDENT AS A CHARTER
	)	PARTY OR EXCURSION SERVICE
BLESSED LIMOUSINE, INC.	)	CARRIER; ORDERING
	)	RESPONDENT TO CEASE &
	)	DESIST; IMPOSING AND
	)	SUSPENDING PENALTIES ON
	)	CONDITION OF FUTURE
.....	)	COMPLIANCE

BACKGROUND

- 1 The Washington Utilities and Transportation Commission (Commission) initiated this special proceeding to determine if Blessed Limousine, Inc. (Blessed Limousine or Company) is operating as a charter party or excursion service carrier for transportation of passengers for compensation between points in the state of Washington and on the public highways of Washington state without the necessary certificate required for such operations. The Commission, through its regulatory staff (Staff), also complains against the Company, alleging four violations of RCW 81.70.220, and requests that the Commission impose penalties of up to \$5,000 per violation for a total potential penalty of \$20,000.

- 2 The Commission convened an evidentiary hearing before Administrative Law Judge Rayne Pearson on November 19, 2015, at 1:30 p.m. At the hearing, Staff presented documentary evidence and testimony from compliance investigator Pam Smith. Clussie Bagby and Genise Bagby, owners of Blessed Limousine, testified for the Company.

- 3 Staff explained that it received a complaint in February 2015 that Blessed Limousine was providing charter party and excursion carrier service in both a stretch Hummer and party bus without Commission authority. On four separate occasions, Staff made contact with

Blessed Limousine to provide technical assistance and explain both the requirements and process for obtaining passenger transportation authority from the Commission.¹

- 4 Ms. Smith testified that Blessed Limousine’s website, www.blessedlimo.net, advertises “18 passenger Executive/Party bus” service and “luxurious 22-passenger limousines.” Ms. Smith also testified that the Company’s Facebook page contains photographs of vehicles with advertisements for a “Seattle H2 Hummer” that “seats up to 22 comfortably” and a 22-passenger limousine.
- 5 Ms. Smith explained that she contacted the Company by email using an assumed name on August 3, 2015, and inquired about transportation services for 17 to 20 people. Blessed Limousine responded the next day and offered to provide the requested services. Again on August 24, 2015, Ms. Smith posed as a consumer and inquired about transportation services for 16 to 18 people. Blessed Limousine responded the next day and offered to provide the requested services.
- 6 Mr. Bagby testified that he does not own the Seattle H2 Hummer or the Executive/Party bus advertised on his website and Facebook page. Rather, he “subcontracts” those vehicles by referring customers who request them to other, Commission-certificated carriers. In response to questions from the bench, Mr. Bagby explained that the photos of both vehicles that appear on his website and Facebook page are generic photos, and that all of the Hummers owned by his “subcontractors” have identical interiors. Mr. Bagby stated that he would submit to the Commission a list of the “subcontractors” he works with as well as documentation of the referrals he makes to those companies no later than close of business on November 24, 2015.
- 7 On November 24, 2015, Mr. Bagby provided two names, “Gary” and “Rick,” and phone numbers for two certificated carriers, Seattle 7 Days Limo and Brar Airport Town Car Service. As of the date of this Order, Mr. Bagby has not provided any additional names, information, or supporting documentation.

¹ According to the Complaint, Staff made contact with the Company on February 23, 2015; March 24, 2015; May 4, 2015; and June 3, 2015.

8 Ms. Bagby corroborated Mr. Bagby’s testimony, and stated that it is common practice for carriers to advertise services they cannot actually provide, but instead “farm out” that business to other carriers when customers request those vehicles.

9 Andrew J. O’Connell, Assistant Attorney General, Olympia, Washington, represents Staff.² Clussie Bagby, Fife, Washington, represents Blessed Limousine, *pro se*.³

DISCUSSION AND DECISION

10 **Classification as Charter Party or Excursion Carrier.** RCW 81.04.510 authorizes this special proceeding to determine whether Blessed Limousine is engaging in business or operating as a charter party or excursion carrier in Washington without the requisite authority. That statute places the burden of proof on the Respondent to demonstrate that its acts or operations are not subject to the provisions of RCW Chapter 81.

11 Under WAC 480-30-036, “motor vehicle,” as it relates to charter party and excursion carriers, is defined as “every self-propelled vehicle with a manufacturer’s seating capacity for eight or more passengers, including the driver.” Limousines and executive party vans with seating capacities of 16 or greater are regulated by the Commission as charter party or excursion carriers. Party buses, defined as any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages or entertainment may be provided, are regulated by the Commission regardless of passenger capacity.⁴

² In adjudications the Commission’s regulatory staff participates like any other party, while an administrative law judge or the Commissioners make the decision. To assure fairness, the Commissioners and the presiding administrative law judge do not discuss the merits of the proceeding with regulatory staff or any other party without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

³ Mr. Bagby requested a continuance at the outset of the hearing, which Judge Pearson denied. Mr. Bagby first stated that his attorney instructed him to request the continuance, but later admitted on the record that he has not retained counsel. Mr. Bagby also claimed that he was not served with the complaint and subpoena despite the process server’s declaration stating that Mr. Bagby was personally served at his home address. The Commission did not find Mr. Bagby’s claim credible.

⁴ RCW 81.70.020(7).

- 12 The record shows that on two occasions, Blessed Limousine offered to provide transportation services, and that on at least two occasions, Blessed Limousine advertised, and continues to advertise, as a charter party and excursion carrier. Moreover, Mr. and Ms. Bagby do not deny that they advertise and offer these services. Accordingly, Mr. and Ms. Bagby were unable to rebut the inferences reasonably drawn from Ms. Smith's testimony and exhibits that, doing business as Blessed Limousine, they have advertised and offered to conduct business as a charter party and excursion service carrier.
- 13 Blessed Limousine claims it does not own or operate the 22-passenger vehicles advertised on its website and Facebook page. The Company, however, holds itself out as a charter party and excursion carrier and offers to provide those services when solicited. Mr. Bagby's claim that he "subcontracts" the charter party and excursion carrier services, even if true, has no bearing on whether the Company's conduct violates applicable law. RCW 81.70.220 defines "engaging in business as a charter party or excursion carrier" to include advertising or soliciting, offering, or entering in to an agreement to provide such service, which Mr. Bagby effectively admits the Company is doing.
- 14 The Commission finds on the basis of this evidence that Blessed Limousine is conducting business that requires Commission approval without the necessary operating authority. The Commission accordingly orders Mr. Bagby, Ms. Bagby, and Blessed Limousine to cease and desist from such conduct, as required by RCW 81.04.510.
- 15 **Penalty.** At the hearing, Staff recommended the Commission impose reduced penalties of \$2,500 for each of the four violations alleged in the Complaint, for a total penalty of \$10,000. Staff further recommended the Commission suspend a \$6,000 portion of the penalty for a period of one year, and then waive it, subject to the following conditions: 1) the Company must submit an application for a certificate to operate as a charter party or excursion carrier no later than November 30, 2015; 2) the Company must cease and desist offering, advertising, and providing charter party or excursion carrier services unless and until it obtains the required certificate from the Commission; 3) the Company must submit to Staff for an inspection of its larger vehicles used for charter party or excursion carrier services; and 4) the Company must comply with applicable statutes and Commission rules for a period of one year from the effective date of the Commission's initial order.

16 The Commission may consider a number of factors when determining the level of penalty to impose, including whether the violations were intentional, whether the company was cooperative and responsive in the course of Staff's investigation, and whether the company promptly corrected the violations once notified.⁵ Here, Blessed Limousine received extensive technical assistance prior to the Commission instituting this special proceeding; Ms. Smith testified that Staff contacted the Company by mail and email on four separate occasions, once in person, and at least once via telephone. Mr. Bagby provided assurances for more than eight months that he would apply for operating authority, but failed to do so. Because Mr. Bagby knew he was in violation of state laws and Commission rules but failed to take corrective action, we find that the violations are both intentional and ongoing.

17 Moreover, as of the date of this Order, Mr. Bagby has neither submitted an application for charter party and excursion carrier authority as promised, nor ceased advertising charter party and excursion carrier services on his website and Facebook page.⁶ Mr. Bagby has failed to make any effort to come into compliance despite the Commission's enforcement action, which constitutes a failure to take prompt corrective action.

18 Considering the factors discussed above, the Commission determines that Mr. Bagby, Ms. Bagby, and Blessed Limousine should be penalized for an amount that will both punish their wrongdoing and encourage them to fully comply with state laws and Commission rules going forward. Given the Company's history of disregarding the Commission's authority and its failure to comply with Staff's proposed conditions for a reduced penalty, we find that a more substantial penalty than that proposed by Staff at hearing is appropriate. Accordingly, we impose the maximum penalty of \$5,000 for each of the four violations alleged in the Complaint, for a total penalty of \$20,000. The Commission will, however, exercise its discretion to suspend a \$10,000 portion of the penalty for a period of two years, and then waive it, subject to the following conditions: 1) the Company must refrain from operating as a charter party or excursion carrier without first obtaining the required permit from the Commission, and 2) the Company must comply with applicable statutes and Commission rules.

⁵ Docket A-120061, Enforcement Policy for the Washington Utilities and Transportation Commission (January 7, 2013).

⁶ As of the date of this Order, the Company's website, www.blessedlimo.net, and Facebook page, www.facebook.com/blessedlimo/, remain unchanged from the date of the hearing.

FINDINGS AND CONCLUSIONS

- 19 (1) The Washington Utilities and Transportation Commission is an agency of the state of Washington vested by statute with authority to regulate persons engaged in the business of providing auto transportation services, including charter party and excursion carrier services, over public roads in Washington.
- 20 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Blessed Limousine.
- 21 (3) On at least two occasions, Blessed Limousine offered to provide charter party and excursion carrier services within the state of Washington without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.
- 22 (4) On at least two occasions, Blessed Limousine advertised to provide charter party and excursion carrier services without first having obtained a certificate from the Commission, in violation of RCW 81.70.220.
- 23 (5) Blessed Limousine should be directed to cease and desist from providing charter party and excursion carrier services over public roads in Washington as required by RCW 81.04.510.
- 24 (6) Blessed Limousine should be penalized \$20,000 for four violations of RCW 81.70.220, a \$10,000 portion of which should be suspended for a period of two years, and then waived, provided the Company refrains from operating as a charter party or excursion service carrier without first obtaining the required permit from the Commission, and complies with all applicable statutes and Commission rules. The Company should pay the remaining \$10,000 portion of the penalty no later than 10 days from the effective date of this Order.

ORDER

THE COMMISSION ORDERS:

- 25 (1) Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. are classified as a charter party and excursion service carrier within the state of Washington.

- 26 (2) Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. are ordered to immediately cease and desist operations as a charter party and excursion service carrier within the state of Washington without first obtaining a permit from the Commission.
- 27 (3) Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. are assessed a penalty of \$20,000. A \$10,000 portion of the penalty is suspended for a period of two years from the date of this Initial Order, and waived thereafter, provided Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. refrain permanently from further operations as a charter party and excursion service carrier in the state of Washington without first obtaining the required certificate from the Commission, and provided Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. comply with all applicable statutes and Commission rules.
- 28 (4) Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. are jointly and severally liable for the remaining \$10,000 portion of the penalty. Clussie Bagby, Genise Bagby, and Blessed Limousine, Inc. must pay the remaining \$10,000 penalty no later than 10 days from the effective date of this Order.
- 29 (5) The Commission retains jurisdiction over the subject matter and the parties to this proceeding to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective December 7, 2015.

RAYNE PEARSON
Administrative Law Judge

NOTICE TO THE PARTIES

This is an initial order. The action proposed in this initial order is not yet effective. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within the time limits outlined below. If you agree with this initial order, and you would like the Order to become final before the time limits expire, you may send a letter to the Commission, waiving your right to petition for administrative review.

WAC 480-07-825(2) provides that any party to this proceeding has twenty (20) days after the entry of this initial order to file a *Petition for Administrative Review*. Section (3) of the rule identifies what you must include in any petition as well as other requirements for a petition. WAC 480-07-825(4) states that any party may file an *Answer* to a Petition for review within (10) days after service of the petition.

WAC 480-07-830 provides that before the Commission enters a final order any party may file a petition to reopen a contested proceeding to permit receipt of evidence essential to a decision, but unavailable and not reasonably discoverable at the time of hearing, or for other good and sufficient cause. The Commission will not accept answers to a petition to reopen unless the Commission requests answers by written notice.

RCW 80.01.060(3), as amended in the 2006 legislative session, provides that an initial order will become final without further Commission action if no party seeks administrative review of the initial order and if the Commission fails to exercise administrative review on its own motion.

You must serve on each party of record one copy of any Petition or Answer filed with the commission, including proof of service as required by WAC 480-07-150(8) and (9). To file a Petition or Answer with the Commission, you must file an original and **two (2)** copies of your Petition or Answer by mail delivery to:

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