

**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 03
)	
BLESSED LIMOUSINE, INC.)	FINAL ORDER
)	
.....)	

BACKGROUND

- 1 On October 27, 2015, the Washington Utilities and Transportation Commission (Commission) entered Order 01 instituting a special proceeding to determine the proper classification of Blessed Limousine, Inc. (Blessed Limousine or Company) and seeking penalties against the Company of up to \$5,000 each for four violations of RCW 81.70.220 (Complaint).
- 2 On November 19, 2015, the Commission convened an evidentiary hearing before Administrative Law Judge (ALJ) Rayne Pearson. On December 7, 2015, the Commission entered Order 02, initial order classifying Blessed Limousine as a charter party or excursion service carrier, ordering Blessed Limousine to cease and desist, and imposing and suspending penalties against Blessed Limousine on condition of future compliance.
- 3 On January 6, 2016, the Company filed a Petition for Administrative Review (Petition) requesting oral argument. In its Petition, the Company requests the Commission find good cause to accept its late filing because the Company claims that Order 02 was delivered to an incorrect address in Tukwila. The Company also alleges it was deprived of due process because its request for a continuance was denied at the brief adjudicative proceeding, it was forced to proceed unrepresented by counsel, and the ALJ admitted exhibits before they were offered into evidence. The Company further argues that that the ALJ erred when she found that the Company’s conduct violates the law and assessed a penalty greater than that recommended by Commission staff (Staff) at hearing.
- 4 Finally, the Company alleges that the imposition of personal liability on the Company’s owners, Clussie and Genise Bagby, was improper because the Company’s corporate entity was the only party named in the Complaint. The Company requests a new hearing

with counsel before a different ALJ, or in the alternative, that the penalty be reduced to the amount recommended by Staff at hearing.

5 On January 13, 2016, Staff filed a response to the Company's Petition. Staff opposes the Company's request to accept its untimely Petition, noting that Order 02 was, in fact, properly served to the Company's current address in Fife. Staff also disagrees with the Company's position that it was denied due process at hearing. The Company was given more than 21 days notice in advance of the hearing, and had ample time to retain counsel, but chose not to. Staff also disagrees with the Company's characterization of the hearing as "unfair," and places the responsibility for any difficulties at the hearing squarely with the Company.

6 Staff further argues that the ALJ acted properly when she exercised her discretion to admit groups of related evidence into the record after hearing testimony from Staff and Blessed Limousine regarding their relevance and trustworthiness. Next, Staff argues that Blessed Limousine misunderstands the law as it relates to the violations found in the complaint and Order 02; the Company's conduct violates the law regardless of whether it owns any of the vehicles for which it was advertising and offering service. Staff also notes that the ALJ properly exercised her discretion when she imposed the maximum penalties for the violations, which were noticed in the Complaint.

7 Finally, Staff agrees with the Company that Clussie and Genise Bagby should not be held personally liable for the penalties because only the Company was named in the Complaint. Staff supports the Company's request to modify Order 02 to reflect that Blessed Limousine is the only party liable for the penalties.

DISCUSSION AND DECISION

8 **Motion to Accept Untimely Petition.** As a preliminary matter, we find that Blessed Limousine's Petition for Administrative Review was not timely filed, and the Company failed to identify good cause for the Commission to depart from its rules and accept the Petition. The basis for the Company's argument – that Order 02 was served to an incorrect address – is without merit. As Staff noted in its response, the Company has been served at its current address in Fife from the outset of this proceeding, despite the Company's claims to the contrary.¹

¹ See TR 22:14-24:18.

9 Nevertheless, the Commission will exercise its discretion to accept the Petition. The Commission recognizes that the Company appeared without the benefit of counsel and the Petition raises legitimate issues for the Commission to consider. Accordingly, we will address each of the Company's arguments in turn.

10 **Request for Oral Argument.** We deny the Company's request for oral argument. WAC 480-07-825(6) requires the party requesting oral argument to state "why oral argument is necessary to assist the Commission in making its decision and why written presentations will be insufficient." As Staff notes, Blessed Limousine failed to state in its Petition why oral argument is necessary, and thus failed to meet its burden. We also do not believe that oral argument would assist the Commission in rendering a final order.

11 **Due Process.** We find that the ALJ appropriately denied Mr. Bagby's request for a continuance. The Commission gave Blessed Limousine three weeks notice of the November 19, 2015, brief adjudicative proceeding. The Company neither retained counsel nor requested a continuance prior to the hearing date. The ALJ's decision to proceed with the hearing in light of those circumstances did not infringe the Company's right to due process.

12 We also find that the Company was given a fair and full opportunity to be heard, and are not persuaded by the Company's claim that Mr. Bagby failed to understand the ALJ's clear instructions and explanations. The record shows that Mr. Bagby was argumentative and uncooperative throughout the proceeding, and that the Company was afforded multiple opportunities to respond to Staff's allegations.² Both Mr. and Ms. Bagby presented testimony to explain why they did not believe the Company committed the violations alleged in the Complaint, and the Company was permitted to submit additional documentation following the hearing to support its claims.

13 Finally, we find that the ALJ acted within the scope of her authority when she admitted groups of related exhibits after hearing testimony from both parties about their authenticity and relevance. Staff correctly argues that WAC 480-07-495, which does not require a presiding officer to follow the rules of evidence, supports the ALJ's decision to

² See TR 11:23-12:19; TR 18:11-23; TR 21:21-25:21; TR 26:5-29:11; TR 30:24-33:16; TR 40:1-15; TR 43:1-44:13; TR 50:18-51:14; TR 58:14-59:18.

admit the related exhibits in batches, rather than individually, once they had been identified and discussed.

- 14 **Violations.** Order 02 correctly held that the Company's conduct violates RCW 81.70.220, which defines "engaging in business as a charter party or excursion carrier" to include advertising or soliciting, offering, or entering into an agreement to provide such service. Blessed Limousine admitted at hearing that it "subcontracts" party bus services and advertises those services. These actions alone establish the violations, regardless of whether the Company owns any of the vehicles it advertises. The facts, therefore, are undisputed, and the law is clear. Staff presented evidence, and the ALJ correctly found, that Blessed Limousine violated the applicable law on four occasions.
- 15 **Penalty.** The ALJ did not err, as the Company contends, when she assessed penalties higher than those conditionally recommended by Staff at hearing. The Company was notified in the Complaint that the Commission could impose penalties of up to \$5,000 per violation, for a total potential penalty of \$20,000. Staff correctly noted that the presiding officer makes the final determination regarding penalties, and has the discretion to deviate from the amount proposed by either party.
- 16 Staff's recommendation for a reduced penalty, and the suspension of a portion thereof, was predicated on the following conditions: 1) the Company was to submit an application for a certificate to operate as a charter party or excursion carrier no later than November 30, 2015; 2) the Company was to cease and desist offering, advertising, and providing charter party or excursion carrier services unless and until it obtained the required certificate from the Commission; 3) the Company was to submit to Staff for an inspection of its larger vehicles used for charter party or excursion carrier services; and 4) the Company was to comply with applicable statutes and Commission rules for a period of one year from the effective date of the Commission's initial order.
- 17 As of the date of Order 02, the Company had neither submitted an application for charter party and excursion carrier authority as promised, nor ceased advertising charter party and excursion carrier services on its website and Facebook page. Accordingly, the ALJ imposed the maximum penalty of \$20,000, suspending a \$10,000 portion of the penalty for a period of two years on the condition that the Company refrains from operating as a charter party or excursion carrier without first obtaining the required permit from the Commission, and complies with applicable statutes and Commission rules.

- 18 We nevertheless conclude that a lesser penalty would be more appropriate. The Commission's ultimate goal is compliance with the laws the legislature has charged us to enforce. We find that the penalty and conditions Staff recommended at the hearing are sufficient to provide Blessed Limousine with the incentive to take steps necessary to come into compliance with applicable laws. Accordingly, we will exercise our discretion to assess a reduced, albeit significant, penalty to both mitigate the financial impact to the Company and deter future violations.
- 19 We impose a penalty of \$10,000 and suspend a \$6,000 portion of the penalty for a period of two years subject to the following conditions:
- 1) Blessed Limousine must pay the \$4,000 penalty amount that is not suspended within 10 business days of the date of this Order;
 - 2) Blessed Limousine must either file a complete application for a certificate to operate as a charter party or excursion carrier no later than February 10, 2016, or provide documentation to the Commission's satisfaction that Blessed Limousine no longer advertises or offers to provide charter party or excursion carrier services;
 - 3) Blessed Limousine 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;
 - 4) Blessed Limousine must allow Staff to inspect any vehicles the Company owns and uses for charter party or excursion carrier services; and
 - 5) Blessed Limousine must comply with applicable statutes and Commission rules for a period of two years from the effective date of this Order.

If the Company complies with these conditions, the Commission will waive the suspended portion of the penalty.

- 20 **Liability.** We agree with Staff and the Company that joint and several liability should not be imposed on Mr. and Ms. Bagby, and reverse Order 02 on this issue. Staff and the Company are correct that the Complaint named only Blessed Limousine as a party to the proceeding, and neither Mr. Bagby nor Ms. Bagby was properly notified that they could be held personally liable.

FINDINGS AND CONCLUSIONS

- 21 (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.
- 22 (2) The Commission has jurisdiction over the subject matter of this proceeding and over Blessed Limousine.
- 23 (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.
- 24 (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.
- 25 (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.
- 26 (6) Blessed Limousine should be penalized \$10,000 for four violations of RCW 81.70.220, a \$6,000 portion of which should be suspended for a period of two years, and then waived, subject to the following conditions: 1) Blessed Limousine must pay the \$4,000 penalty amount that is not suspended within 10 business days of the effective date of this Order; 2) Blessed Limousine must either file a complete application for a certificate to operate as a charter party or excursion carrier no later than February 10, 2016, or provide documentation to the Commission's satisfaction that Blessed Limousine no longer advertises or offers to provide charter party or excursion carrier services; 3) Blessed Limousine must cease and desist offering, advertising, and providing charter party or excursion carrier service unless it obtains the required certificate from the Commission; 4) Blessed Limousine must allow Staff to inspect any vehicles the Company owns and uses for charter party and excursion carrier services; and 5) Blessed Limousine must comply with all applicable statutes and Commission rules for a period of two years from the effective date of this Order.

- 27 (7) Because Blessed Limousine is the only named party to this proceeding, it should be the only party liable for the penalty.

ORDER

THE COMMISSION ORDERS:

- 28 (1) Blessed Limousine, Inc.'s Petition for Administrative Review is GRANTED, in part, and Order 02 is modified to reflect that only Blessed Limousine, Inc., is liable for penalties the Commission assesses for the violations of RCW 81.70.220.
- 29 (2) Blessed Limousine, Inc. is assessed a penalty of \$10,000 for four violations of RCW 81.70.220. A \$6,000 portion of the penalty is suspended for a period of two years, and waived thereafter, subject to the following conditions: 1) Blessed Limousine, Inc. must pay the \$4,000 penalty amount that is not suspended within 10 business days of the effective date of this Order; 2) Blessed Limousine, Inc. must either file a complete application for a certificate to operate as a charter party or excursion carrier no later than February 10, 2016, or provide documentation to the Commission's satisfaction that Blessed Limousine, Inc. no longer advertises or offers to provide charter party or excursion carrier services; 3) Blessed Limousine, Inc. must cease and desist offering, advertising, and providing charter party or excursion carrier service unless it obtains the required certificate from the Commission; 4) Blessed Limousine, Inc. must allow Staff to inspect any vehicles the Company owns and uses for charter party and excursion carrier services; and 5) Blessed Limousine, Inc. must comply with all applicable statutes and Commission rules for a period of two years from the effective date of this Order.
- 30 (3) Blessed Limousine, Inc.'s Petition for Administrative Review in all other respects is DENIED.

- 31 (4) 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 January 26, 2016.

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. Parties may seek judicial review pursuant to RCW 34.04.542.