

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2010-2177857

Pennsylvania Public Utility Commission v. Yellow Cab Company of Pittsburgh

**PETITION TO RESCIND ORDER AND FOR LEAVE TO
FILE ANSWER TO COMPLAINT, *NUNC PRO TUNC***

AND NOW, comes Petitioner, Yellow Cab Company of Pittsburgh, by and through its attorneys, Paul S. Guarnieri, Esquire and Malone Middleman, P.C., and in support of the within Petition to Rescind Order and for Leave to file Answer *Nunc Pro Tunc*, sets forth as follows:

1. Upon information and belief, it is averred that on or about May 24, 2010, the Pennsylvania Public Utility Commission, Bureau of Transportation and Safety filed a Complaint against Petitioner in the above captioned matter. A true and correct copy of the said Complaint, as received from commission personnel on January 5, 2011, is attached hereto and incorporated herein as Exhibit "A".

2. The aforesaid Complaint was approved by the Commission on October 13, 2010. See the Pennsylvania Public Utility Commission Case View for Docket Number C-2010-2177857, a copy of which is attached hereto and incorporated herein as Exhibit "B".

3. On October 13, 2010, Secretary Rosemary Chiavetta attempted to serve the Complaint via certified mail. See letter from Secretary Chiavetta dated December 30, 2010, a copy of which is attached hereto and incorporated herein as Exhibit "C".

4. As acknowledged by Secretary Chiavetta, herself, the aforementioned Complaint and notice were returned as "undeliverable" on October 25, 2010. The basis of this return is unknown to the Petitioner as the primary business address of Yellow Cab is well known to the Commission and has not changed in over 10 years. See Exhibit "C".

5. 52 Pa. Code §1.53(c) *Registered or Certified Mail*, provides as follows:

(c) *Registered or certified mail.* Service of a petition under §3.391 (relating to arbitration of claims for filing and collection services), and service of a complaint under section 702 of the act (relating to service of complaint on parties) **must** be by registered or certified mail, return receipt requested. (Emphasis added).

6. 66 Pa.C.S. §702, *Service of complaint on parties*, provides as follows:

Upon the filing of a complaint, the commission shall cause to be served upon each party named in the complaint a copy of the complaint and notice from the commission calling upon such party to satisfy the complaint, or to answer the same in writing, within such time as is specified by the commission in the notice. Service in all hearings, investigations and proceedings pending before the commission **shall** be made by registered or certified mail. (Emphasis added).

7. The initial Complaint and notice herein were originally sent by certified mail on October 14, 2010, and were returned as “undeliverable” on October 25, 2010. The letter from Secretary Chiavetta dated December 30, 2010 indicates that the Complaint and notice were then, subsequently, sent out by first class mail on an unspecified date some time after October 25, 2010. See Exhibit “C”.

8. Petitioner’s first notice of the Complaint was by receipt of the letter from the Secretary dated December 30, 2010, which deemed the allegations in the Complaint as admitted and sustained the violations and fines set forth therein.

9. Petitioner asserts that the Complaint and notice were improperly served by regular mail. (It is further noted that Yellow Cab has no record of having received such mailing).

10. Even if the Commission were to attempt to assert that mailing the Complaint by regular mail was appropriate, it clearly does not comply with the Commission’s own regulations regarding alternative service. 52 Pa. Code §1.53(e), *alternative service* provides that:

If the Commission is unable to serve a party by mail at the party’s last known address, the Commission may make service by publication in a newspaper of general circulation in the same area as the party’s last known address. In the alternative,

service may also be accomplished by publication in the *Pennsylvania Bulletin* or by service on the Secretary of the Commonwealth, if appropriate.

11. Petitioner has meritorious defenses to the Complaint filed by the Bureau of Transportation and Safety. Please see attached Exhibit "D", a copy of the Petitioner's proposed Answer to the Complaint. Petitioner herein further seeks leave to file the above referenced Answer in this matter.

12. Petitioner requests that the Order of December 30, 2010 finding that the allegations of the Complaint are admitted and that the Complaint is sustained be rescinded because the Complaint was not properly served upon Petitioner.

13. In compliance with 52 Pa. Code §5.572(a); §5.572(d) and 66 Pa.C.S. §703(g), Petitioner respectfully request that the Commission rescind the Order dated December 30, 2010 finding that the allegations of the Complaint are sustained and admitted and that the Petitioner's request to file an Answer to the Complaint *nunc pro tunc* within ten (10) days of this Order be granted.

Respectfully submitted,

Yellow Cab Company of Pittsburgh

By: 

Paul S. Guarnieri, Esquire
Attorney for Petitioner
MALONE MIDDLEMAN, P.C.
117 VIP Drive, Suite 310
Wexford, PA 15090
(724) 934-6888

Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2010-2177857

Pennsylvania Public Utility Commission v. Yellow Cab Company of Pittsburgh

ORDER OF COURT

AND NOW, to wit, this _____ day of _____, 2011, upon consideration of Yellow Cab Company of Pittsburgh's Petition to Rescind Order and for Leave to File Answer to Complaint, *Nunc Pro Tunc*, it is hereby ORDERED, ADJUDGED and DECREED that said Petition is **GRANTED** and Petitioner Yellow Cab Company of Pittsburgh is to file its Answer to the Complaint filed at Docket No. C-2010-2177857 within ten (10) days of the date of this Order.

By the Court:

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF TRANSPORTATION AND SAFETY

V.

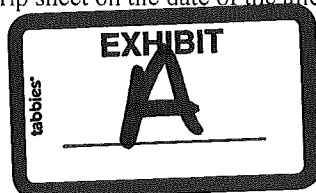
C-2010-2177857

YELLOW CAB COMPANY OF PITTSBURGH
1301 BEAVER AVENUE
PITTSBURGH PA 15233
A-00049926

COMPLAINT

The Pennsylvania Public Utility Commission (Commission) is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth. The Commission has delegated its authority to initiate proceedings which are prosecutory in nature to the Bureau of Transportation and Safety and other bureaus with enforcement responsibilities. Pursuant to that delegated authority and Section 701 of the Public Utility Code, the Bureau of Transportation and Safety Prosecutory Staff hereby represents as follows:

1. That Yellow Cab Company of Pittsburgh, respondent, maintains its principal place of business at 1301 Beaver Avenue, Pittsburgh, PA 15233.
2. That respondent was issued a certificate of public convenience by this Commission on August 21, 1946, at Application Docket No. A-00049926 for call or demand authority.
3. That on May 22, 2010, at approximately 7:20 p.m., respondent's driver of taxicab No. 290 transported Larry and Lisa Brzeckowski from the Sheraton Hotel on Carson Street, Pittsburgh to the Radisson Hotel in Greentree. Upon getting into the cab they advised the cab driver that they wanted to go to the Radisson Hotel. The driver looked disheveled and had a strong odor. The driver was swerving in and out of traffic and drove through a red light. The driver pulled up to the Ramada Hotel; Mr. Brzeckowski again told the driver they wanted to go to the Radisson Hotel. The driver then drove the Brzeckowski's to the Radisson Hotel. Approximately five minutes later, Mr. Brzeckowski realized that he left his cell phone in the back seat of the taxicab. Mr. Brzeckowski telephoned the Yellow Cab dispatch which advised him that they have no way of contacting the driver. Mr. Brzeckowski called his cell phone three times without success. He then called respondent again and asked for a supervisor and was told that there was no supervisor on duty, and transferred his call to the lost and found department. Mr. Brzeckowski was unable to leave a message because the message box was full. On the way back to their hotel, the Brzeckowski's spotted the driver and asked to check the taxicab for their cellular phone. The phone was not in the cab and the driver said he did not see it or hear it ringing. On June 21, 2010, Enforcement Officer Gary Double met respondent's Safety Manager, Paul Caliarì and advised him of the complaint. Mr. Caliarì advised Officer Double that the driver was Michael Costanzo. On the point of the lost and found box being unable to receive messages, Mr. Caliarì advised Officer Double that the coordinator of the lost and found department was on vacation for a week and prior to that was in recovery for an operation for approximately six weeks. Regarding the point of no supervisor on duty for the night of May 22nd, Mr. Caliarì responded that at the time of the alleged incident there were only two supervisors employed by respondent and coverage was not 100%. They have recently hired two part-time supervisors to fill in uncovered time periods. On June 23, 2010, Mr. Caliarì called Officer Double to advise him that taxicab 290 was not returned by the leased driver, the driver was past his lease and that he was locked out of the system. He continued that if the taxicab was not returned it would be reported as a stolen vehicle. Mr. Caliarì contacted Officer Double on June 24, 2010, and advised him that a tow truck would be returning the taxicab to respondent's place of business and it would be available for an inspection on Friday, June 25th. On June 25, 2010, Officer Double performed an inspection on respondent's taxicab No. 290 and found no violations or odor. A review of the driver's trip sheet on the date of the alleged incident showed that the driver



failed to log the Brzeckowski's trip, failed to include the end time, and used abbreviations or landmarks in the origin/destination section.

4. That respondent, by failing to transport a passenger to their destination by the shortest practical route, violated 52 Pa. Code §29.313(b). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory staff's proposed civil penalty for this violation is \$100.00.

5. That respondent, by failing to have a complete driver log sheet or a trip sheet in its vehicle, violated 52 Pa. Code §29.335(a)(2). The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory staff's proposed civil penalty for this violation is \$50.00.

6. That respondent, by failing to have a supervisor on duty at all times, and by failing to be in direct control and supervision of its operations and service, violated 52 Pa. Code §29.101(a)(5), which states that vehicles shall be leased or owned by the certificate holder and the operation and service shall be under the direct control and supervision of the certificate holder. The Bureau of Transportation and Safety Motor Carrier Services and Enforcement's Prosecutory staff's proposed civil penalty for this violation is \$500.00.

WHEREFORE, the Bureau of Transportation and Safety Prosecutory Staff hereby requests that the Commission fine Yellow Cab Company of Pittsburgh, the sum of six hundred fifty dollars (\$650.00) for the illegal activity described in this complaint and order other remedy as the Commission may deem to be appropriate.

Respectfully submitted,

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
Bureau of Transportation and Safety
P.O. Box 3265
Harrisburg, PA 17105-3265

VERIFICATION

I, Wendy J. Keezel, Chief of Enforcement for the Motor Carrier Services and Enforcement Division of the Bureau of Transportation and Safety, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: _____

Wendy J. Keezel

NOTICE

A. You must file an answer within twenty (20) days of the date of service of this complaint. The date of service is the mailing date as indicated at the top of the Secretarial cover letter for this complaint and notice, 52 Pa. Code §1.56(a). An answer is a written explanation of circumstances wished to be considered in determining the out come. The answer shall raise all factual and legal arguments that you wish to claim in your defense and must include the reference number of this complaint. Your answer must be verified and the original and three (3) copies sent to:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

B. If you fail to answer this complaint within twenty (20) days, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

C. You may elect not to contest this complaint by paying the fine proposed in this complaint by certified check or money order. Payment must be made to the Pennsylvania Public Utility Commission, P.O. Box 3265, Harrisburg, PA 17105-3265. Your payment is an admission that you committed the alleged violation and an agreement to cease and desist from further violations. Upon receipt of your payment, the complaint proceeding shall be closed.

D. If you file an answer which admits or fails to deny the allegation of the complaint, the Bureau of Transportation and Safety will request that the Commission issue a Secretarial Letter imposing a penalty.

E. If you file an answer which contests the complaint, the matter will be assigned to an administrative law judge for hearing and decision. The judge is not bound by the optional fine set forth above.

F. Alternative formats of this material are available, for persons with disabilities, by contacting the Compliance Office at (717) 787-1227.



Pennsylvania Public Utility Commission



- [Home](#)
- [Electricity](#)
- [Natural Gas](#)
- [Telecommunications](#)
- [Water/Wastewater](#)
- [Transportation & Safety](#)

[Search Public Documents](#) **Consolidated Case View**

- [Home](#)
- [eFiling](#)
- [Daily Actions & Hearings](#)
- [Obtain/File Information](#)
- [Online Forms](#)
- [Publication & Reports](#)
- [Regulatory Information](#)
- [Career Opportunities](#)
- [Consumer Concerns](#)
- [File Complaints](#)
- [Right-To-Know](#)
- [Electric Shopping](#)
- [Request for Proposals](#)

[Go Back](#)

The consolidated case view displays the case information (Identified by Docket Number **C-2010-2177857**), any Daily Actions performed on the case, and lists all public documents associated with that case.

Case Summary

| | |
|--|---|
| Docket Number C-2010-2177857 (Formal Complaint) | Case Status: Closed |
| Applicant: | Utility Code: 639135 |
| Complainant: BUR OF TRANSPORTATION & SAFETY | Utility Name: YELLOW CAB CO. OF PITTSBURGH |
| Respondent: YELLOW CAB CO OF PITTSBURGH | Utility Type: Taxi |
| Responsible Bureau: Bureau of Transportation & Safety | Efiling Confirmation Number (Case): |
| Date Filed: 5/24/2010 | Date Case Posted: 10/13/2010 |
| Case Description: TAS complaint against Yellow Cab Co of Pittsburgh | |

Daily Actions

| Action Date | Description | Posted Date |
|-------------|--|-------------|
| 10/13/2010 | Approve C Docket Assignment - Other - See Comments - Requested by TAS. | 10/13/2010 |
| 10/13/2010 | Document Served - Other - See Comments - Notice of complaint served to respondent for answer due November 2, 2010. | 10/13/2010 |
| 10/13/2010 | Document Published on Web - Document 'YELLOW CAB CO OF PITTSBURGH TAS LTR.doc' is made public | 10/13/2010 |
| 10/27/2010 | Document Attached to Case - Case Related Document - BUREAU COMPLAINT RETURNED UNABLE TO FORWARD REC'D 10/25/2010 | 10/27/2010 |
| 12/30/2010 | Document Served - Other - See Comments - fine letter served 12/30/10 | 12/30/2010 |
| 12/30/2010 | Document Published on Web - Document 'SL YELLOW CAB CO OF PGH.2177857.DOC' is made public | 12/30/2010 |

Public Documents

| Document Title | Document Type | eFiling Confirmation Number | Received Date | Date Served | Reference Docket Number |
|---|--------------------|-----------------------------|---------------|-------------|-------------------------|
| YELLOW CAB CO OF PITTSBURGH TAS LTR.doc | Secretarial Letter | | | | |
| SL YELLOW CAB CO OF PGH.2177857.DOC | Secretarial Letter | N/A | | 12/30/2010 | |

[About PUC](#) | [Contact Us](#) | [Search](#) | [Feedback](#)

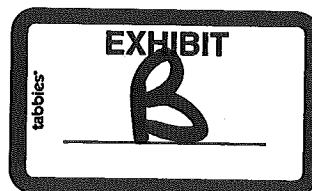
[Announcements](#) | [Meet Commissioners](#) | [Staff Directory](#) | [Press Releases](#) | [File Complaints](#) | [Obtain/File Information](#) | [Public Meeting Calendar](#) | [Daily Actions & Hearings](#) | [Online Forms](#) | [Publications & Reports](#) | [Consumer Education](#) | [Regulatory Information](#)



© 2011 Pennsylvania Public Utility Commission



Disclaimer: All information that appears on this website is merely an electronic representation and is not the officially filed information. The official documents reside in the File Room of the Public Utility Commission in 2-North, on the second floor of the Commonwealth Keystone Building in Harrisburg and are available for public inspection during normal business hours





COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

AIT - Kay

IN REPLY PLEASE
REFER TO OUR FILE

December 30, 2010

C-2010-2177857

YELLOW CAB CO OF PITTSBURGH
1101 BEAVER AVENUE
PITTSBURGH PA 15233

In Re: Pennsylvania Public Utility Commission
v.
Yellow Cab Co. of Pittsburgh
Docket No. A-00049926

Dear Sirs:

On October 13, 2010, the Bureau of Transportation and Safety instituted a complaint against Yellow Cab Company of Pittsburgh, respondent, alleging that respondent failed to transport a passenger to their destination by the shortest practical route, a violation of 52 Pa. C.S. §29.313(b); failed to have a complete driver log sheet or a trip sheet in its vehicle, a violation of 52 Pa. C.S. §29.335(a)(2); and failed to have a supervisor on duty at all times, and failed to be in direct control and supervision of its operations and service, a violation of 52 Pa. C.S. §29.101(a)(5), which states that vehicles shall be leased or owned by the certificate holder and the operations and service shall be under the direct control and supervision of the certificate holder.

Respondent was duly notified that, if an answer was not filed within twenty (20) days of receipt of the complaint, the penalty would be imposed.

The complaint and notice were sent by certified mail on October 14, 2010, and returned as undeliverable on October 25, 2010. The complaint and notice were then sent out by first class mail to 1101 Beaver Avenue, Pittsburgh, PA 15233, and, to date, more than thirty (30) days later, no response has been received from respondent.

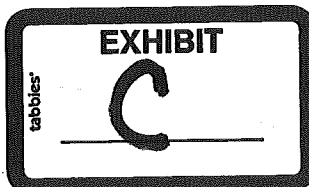
Therefore, the allegations in the complaint are admitted and the complaint is sustained.

Respondent, within twenty (20) days from the date of service of this letter, shall pay a fine of six hundred fifty dollars (\$650.00) by certified check or money order payable to the Pennsylvania Public Utility Commission, at P.O. Box 3265, Harrisburg, PA 17105-3265, as provided in the Public Utility Code, 66 Pa. §§3301 and 3315, shall cease and desist from further violations of the Public Utility Code, 66 Pa. C.S. §§101, et seq., and the Regulations of this Commission, 52 Pa. Code §§1.1, et seq.

Very truly yours,

Rosemary Chiavetta
Rosemary Chiavetta
Secretary

cc: Document Folder



Before the
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKET NO. C-2010-2177857

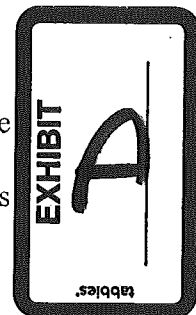
Pennsylvania Public Utility Commission v. Yellow Cab Company of Pittsburgh

ANSWER TO COMPLAINT

AND NOW, comes Respondent, Yellow Cab Company of Pittsburgh, by and through its attorneys, Paul S. Guarnieri, Esquire and Malone Middleman, P.C., and in support of the within Answer sets forth as follows:

1. Admitted.
2. Admitted.
3. Admitted in part and denied in part. It is admitted that on May 22, 2010 respondent's driver of taxi cab number 290 transported Larry and Lisa Brzeckowski from the Sheraton Hotel on Carson Street to the Radisson Hotel. It is denied that the said driver was disheveled, had a strong odor, was swerving in and out of traffic, and ran a red light. After reasonable investigation, respondent lacks knowledge or information sufficient to form a belief as to the truth of the alleged communications between Mr. and Mrs. Brzeckowski and Officer Gary Double, and therefore, the same are denied. By way of further answer, and after reasonable investigation, respondent lacks knowledge or information sufficient to form a belief as the truth of the allegations with respect to the communications between Officer Double and Paul Caliari, and therefore, the same are denied. It is denied that the vehicle trip sheet failed to reveal the Brzeckowski trip or that the trip sheet was in violation of the PUC Code.

4. The allegations contained within paragraph 4 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that an answer is



deemed necessary, then it is denied that respondent failed to transport a passenger to the destination by the shortest practical route.

5. The allegations contained within paragraph 5 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that an answer is deemed necessary, then it is submitted that 52 Pa. Code §29.335(a)(2) is inapplicable to the call and demand service provided by respondent.

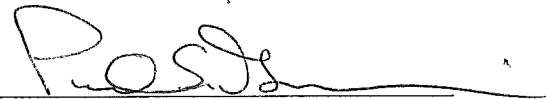
6. The allegations contained within paragraph 6 of the Complaint constitute conclusions of law to which no responsive pleading is required. To the extent that an answer is deemed necessary, then it is denied that respondent failed to have a supervisor on duty at all times. To the contrary, at all times material hereto, the vehicle and driver were under the direct control and supervision of respondent.

WHEREFORE, respondent, Yellow Cab Company of Pittsburgh, respectfully requests that the complaint filed in this matter be dismissed.

Respectfully submitted,

Yellow Cab Company of Pittsburgh

By: _____



Paul S. Guarnieri, Esquire
Attorney for Respondent
MALONE MIDDLEMAN, P.C.
117 VIP Drive, Suite 310
Wexford, PA 15090
(724) 934-6888

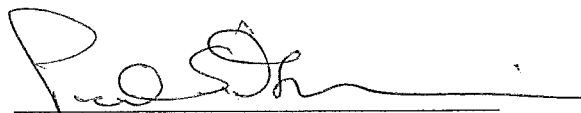
CERTIFICATE OF SERVICE

I hereby certify that I have, this day served a true copy of the foregoing Answer upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party):

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
Bureau of Transportation and Safety
PO Box 3265
Harrisburg, PA 17105-3265

Dated this _____ day of January 2011.



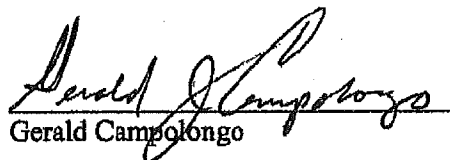
Paul S. Guarnieri, Esquire
Counsel for Respondent

VERIFICATION

I, Gerald Campolongo, have read the foregoing Petition to Rescind Order and for Leave to File Answer to Complaint, *nunc pro tunc*. The statements herein are correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S. Section 4904 relating to unsworn falsification to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

BY:


Gerald Campolongo

Date: 01/07/11

CERTIFICATE OF SERVICE

I hereby certify that I have, this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of §1.54 (relating to service by a party):

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Wendy J. Keezel, Chief of Enforcement
Motor Carrier Services & Enforcement Division
PO Box 3265
Harrisburg, PA 17105-3265

Dated this 7th day of January 2011.



Paul S. Guarnieri, Esquire
Counsel for Petitioner