

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

IN RE: APPLICATION OF DANACH LLC:      Docket No. 2013-2391804

REPLY EXCEPTIONS of APPLICANT,  
DANACH LLC

DAVID P. TEMPLE, ESQUIRE  
GALLAGHER, MALLOY & GEORGES, P.C.  
1760 MARKET STREET, SUITE 1100  
PHILADELPHIA, PA 19103  
(215) 963-1555

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

-----  
ADMINISTRATIVE LAW JUDGE CHRISTOPHER PELL  
-----

IN RE: APPLICATION OF DANACH LLC:                      Docket No. 2013-2391804

**REPLY TO PLAINTIFF'S EXCEPTIONS TO THE INITIAL DECISION OF  
ADMINISTRATIVE LAW JUDGE CHRISTOPHER PELL**

AND NOW, comes Applicant Danach LLC., by and through their undersigned counsel, and makes the following Reply to the Exceptions of Plaintiff to the Initial Decision of Judge Christopher Pell., and in support thereof avers the following:

**REPLY EXCEPTION 1.**

**Plaintiffs Exception as to standing is in error as the case law is clear that the  
Protestant must possess the same authority as sought by the Applicant to have  
standing**

The Protestant files this exception making an argument that they have a direct, immediate and substantial impact on their operation. The law is clear and was spelled out by Judge Pell in his decision dismissing the protest of Germantown Cab Company on March 5, 2014 attached hereto as Exhibit A.

The Applicant herein proposes to operate a limousine business. Limousines are regulated by the Commission for all purposes including the requirement of advanced reservation and driver and vehicles standards. Any limousine provider will be required to follow these regulations. The vehicles of the Applicant will not be equipped with a

taximeter, will not have a dome light and do not accept street hails, all of which are indices of call and demand service. If the Applicant does not operate under the regulations of the Commission it is the job of the Commission to regulate that activity and not for Germantown Cab to speculate how it will be handled. There are three other protestants to this application, each of which are limousine providers and two of which have common ownership with Germantown Cab. These protestants shall be given freedom to cross examine the Applicant at the scheduled hearing and develop a record to challenge the operational or financial fitness of the Applicant.

The requirement that a protestant have the same authority as the Applicant has been established law for many years. (see Judge Pell decision, Exhibit A) There are many reasons a carrier could state that would have an alleged impact on their operation. To allow an expansion of that right of standing would open the floodgates to all types of protests from carriers that do not possess the same authority as the Applicant. Germantown Cab Company as a call and demand carrier has no standing herein and any issues related to the limousine operation proposed by the Applicant will be addressed and protected by the protesting limousine companies, including those owned by Germantown Cabs shareholders

## **REPLY EXCEPTION 2**

### **Exceptions Must Be Dismissed As Untimely**


The decision was Judge Pell was issued on March 5, 2014. Pursuant to the regulations, exceptions to the Initial Decision must be filed within twenty (20) days. 52 Pa.Code §5.533. The Initial Decision of Judge Pell was issued on March 5, 2014, a Secretarial letter was issued was on March 19, 2014. The exceptions in this matters were

filed on April 9, 2014, which is thirty-five (35) days after the decision and twenty-one (21) days after the issuance of the Secretarial letter. In either instance the exceptions of the Protestant Germantown Cab must be dismissed as untimely

Respectfully submitted,

GALLAGHER, MALLOY & GEORGES, P.C.

BY:



---

David P. Temple, Esquire  
Attorney for Defendant  
Danach LLC

CERTIFICATE OF SERVICE


I, David Temple, hereby certify that a copy of Defendant's Reply to the Exceptions of the Plaintiffs to the Initial Decision of Administrative Law Judge Christopher Pell was electronically filed and sent by overnight messenger on April 21, 2014, to the following parties:

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
2<sup>nd</sup> Floor Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

Hon. Christopher Pell  
Pennsylvania Public Utility Commission  
801 Market Street  
Suite 4063  
Philadelphia, PA 19107

Pennsylvania Public Utility Commission  
Office of Special Assistants  
3rd Floor Keystone Building  
400 North Street  
Harrisburg, PA 17105

Michael S. Henry, Esquire  
2415 S. Broad Street  
Philadelphia, PA 19148

  
\_\_\_\_\_  
DAVID P. TEMPLE

Dated: April 21, 2014

**EXHIBIT**  
**A**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Danach, LLC to transport as a :  
common carrier persons in limousine service from :  
points in the counties of Bucks, Montgomery, : A-2013-2391804  
Delaware and Chester to points in the :  
Commonwealth of Pennsylvania and return :

**INITIAL DECISION DISMISSING  
THE PROTEST OF GERMANTOWN CAB COMPANY**

Before  
Christopher P. Pell  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

This Initial Decision grants applicant's Preliminary Objection and dismisses the Protest of Germantown Cab Company for lack of standing.

On October 16, 2013, Danach, LLC (Danach or applicant) filed an Application for Motor Common Carrier of Persons in Limousine Service with the Pennsylvania Public Utility Commission (Commission) requesting a certificate of public convenience providing an initial grant of authority for the following:

to transport as a common carrier persons in limousine service from points in the counties of Bucks, Montgomery, Delaware and Chester to points in the Commonwealth of Pennsylvania and return.

Notice of the Application was provided in the December 7, 2013, *Pennsylvania Bulletin*, 43 Pa.B. 7201. Protests were due by December 23, 2013.

On December 23, 2013, Michael S. Henry, Esq. filed a timely Protest to the Application on behalf of Executive Transportation Company, Inc. d/b/a Luxury Sedan Service.

On January 2, 2014, Mr. Henry filed Protests to the Application on behalf of Black Tie Limousine Service, Inc., Germantown Cab Co., and Five Star Limousine Service, Inc.

Also on January 2, 2014, regarding the Protests he filed on behalf of Black Tie Limousine Service, Inc., Germantown Cab Co., and Five Star Limousine Service, Inc., Mr. Henry filed a Motion To Accept E-Filing Nunc Pro Tunc.

Applicant subsequently filed Preliminary Objections<sup>1</sup> to the Protests of Executive Transportation Company, Inc. d/b/a Luxury Sedan Service, Black Tie Limousine Service, Inc., Germantown Cab Co., and Five Star Limousine Service, Inc. Applicant requested dismissal of all four Protests on the grounds that they were filed beyond the December 23, 2013 filing deadline and are therefore untimely. Applicant also seeks dismissal of these Protests on the grounds that there is no longer a requirement to show need for a limousine applicant and also because the Protests are invalid because they each lack the required legal and factual specificity. Additionally, applicant seeks dismissal of the Protest filed by Germantown Cab Co. on the grounds that this protestant lacks standing.

On January 22, 2014, each protestant filed an Answer to applicant's Preliminary Objections. Each Answer essentially denied the averments set out in applicant's Preliminary Objections. Each protestant also requested that, if the Commission concludes that the protest is not sufficiently specific, the Commission grant it leave to amend its Protest pursuant to 52 Pa.Code § 5.101(c).

By Hearing Notice dated February 14, 2013, a hearing was scheduled for March 19, 2014, at 10:00 a.m. and the matter, including the outstanding Motions and Preliminary Objections, was assigned to me.

---

<sup>1</sup> The Commission's electronic docketing system indicates that the applicant filed its Preliminary Objections to the Protests filed by Executive Transportation Company, Inc. d/b/a Luxury Sedan Service and Germantown Cab Co. on January 13, 2014 while the applicant filed its Preliminary Objections to the Protests filed by Black Tie Limousine Service, Inc. and Five Star Limousine Service, Inc. on January 15, 2014.

As explained in more detail below, I will grant applicant's request to dismiss the Protest of Germantown Cab Company for lack of standing. Applicant's remaining Preliminary Objections regarding timeliness and legal sufficiency of each Protest will be dealt with by separate Order.

#### FINDINGS OF FACT

1. The applicant in this case is Danach, LLC.
2. On October 16, 2013, Danach, LLC filed an Application for Motor Common Carrier of Persons in Limousine Service with the Pennsylvania Public Utility Commission.
3. Notice of this application was published in the *Pennsylvania Bulletin* on December 7, 2013. The notice stated that the deadline for filing protests was December 23, 2013.
4. On December 23, 2013, Michael S. Henry, Esq. filed a timely Protest to the Application on behalf of Executive Transportation Company, Inc. d/b/a Luxury Sedan Service.
5. On January 2, 2014, Mr. Henry filed Protests to the Application on behalf of Black Tie Limousine Service, Inc., Germantown Cab Co., and Five Star Limousine Service, Inc.
6. On January 2, 2014, Mr. Henry filed a Motion To Accept E-Filing Nunc Pro Tunc the Protests of Black Tie Limousine Service, Inc., Germantown Cab Co., and Five Star Limousine Service, Inc.
7. On January 13, 2014, Danach, LLC filed Preliminary Objections seeking dismissal of the Protests filed by Executive Transportation Company, Inc. d/b/a Luxury Sedan Service and Germantown Cab Co.
8. On January 15, 2014, Danach, LLC filed Preliminary Objections seeking dismissal of the Protests filed by Black Tie Limousine Service, Inc. and Five Star Limousine Service, Inc.

9. On January 22, 2014, Executive Transportation Company, Inc. d/b/a Luxury Sedan Service, Germantown Cab Co., Black Tie Limousine Service, Inc. and Five Star Limousine Service, Inc. each separately filed Answers to applicant's Preliminary Objections.

10. Protestant Germantown Cab Co. is a certified public utility authorized to transport persons upon call or demand in the state of Pennsylvania with certain restrictions

### DISCUSSION

The filing of preliminary objections is permitted under Commission regulations. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transp. Intervenor v. Equitable Gas Co.*, 1994 Pa. P.U.C. LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

**§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative dispute resolution.

(7) Standing of a party to participate in the proceeding.

52 Pa.Code § 5.101(a).

Danach, LLC (Danach) has filed a Preliminary Objection seeking dismissal of Germantown Cab Co.'s (Germantown) protest, alleging that Germantown lacks standing to protest Danach's application. The Commission's regulation governing protests to passenger common carrier applications at 52 Pa.Code § 3.381(c)(1)(i)(C) provides as follows:

(C) A protest shall be treated as a pleading and the applicant may, within 20 days after the closing date for the filing of protests, file motions to strike, to dismiss, or for amplification as provided in §5.101 (relating to preliminary motion).

Here Germantown filed its protest on January 2, 2014. Danach filed its Preliminary Objection seeking dismissal on January 13, 2014. Danach therefore filed its Preliminary Objection in a timely fashion.

In deciding the Preliminary Objection, the Commission must determine whether, based on well-pleaded factual averments of the Petitioners, recovery or relief is possible. *Dept. of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

Therefore, the Preliminary Objection can be granted only if recovery or relief is not possible after all of the protestant's averments in the Protest are viewed as true for purposes of deciding the Preliminary Objection, using only those facts specifically admitted.

Viewing the averments in Germantown's Protest as true for purposes of disposing of the Preliminary Objection, Germantown is a certified public utility authorized to transport persons upon call or demand in the state of Pennsylvania with certain restrictions, and Danach is seeking the right to transport as a common carrier, by motor vehicle, persons in limousine service, between points in Bucks, Montgomery, Chester and Delaware Counties, and return, excluding service that is under the jurisdiction of the Philadelphia Parking Authority. Germantown objects to the granting of this Application on the grounds that the applicant cannot meet its burden under 52 Pa.Code § 41.14 as to need, fitness and harm to protestant.

In its Preliminary Objection, Danach contends that Germantown's authority is for the transportation of persons upon call or demand, while the type of service it seeks in this Application, limousine, is not within the authority held by Germantown. Danach argued that, since the authority sought within the Application is not the same authority as possessed by Germantown, then Germantown lacks standing to protest this Application.

In response, Germantown admitted that its authority is for the transportation of persons upon call or demand and, without offering any specifics, maintained that Danach's proposed service has a rate structure that makes it more like call or demand service than limousine service, which is within Germantown's authority.

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. *Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co.*, 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*,

A-212285F0046/47 and A-210870F01 (July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. PUC 342 (1993); *Re Equitable Gas Co.*, 76 Pa. PUC 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. PUC 43 (1976); *Waddington v. Pa. Pub. Util. Comm'n*, 670 A.2d 199 (Pa.Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996). Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *Pa. Pub. Util. Comm'n v. National Fuel Gas Distribution Corp.*, 73 Pa. PUC 552 (1990).

Admitting the allegations in Germantown's Protest as true for purposes of disposing of Danach's Preliminary Objection, it is clear that Germantown does not hold a certificate of public convenience for limousine service. Germantown is authorized to transport persons upon call or demand. The type of authority held by Germantown and the type of authority sought by Danach are not in conflict. Germantown's interest is not direct, immediate or substantial because it has no discernable interest other than the general interest of all citizens in seeking compliance with the law. Consequently, Germantown lacks standing to protest Danach's Application.

The Commission has previously addressed a party's standing to protest an application for motor carrier authority. In *Application of Carriage Limousine Services, Inc.*, Docket No. A-00108361, F.1, Am-B, Administrative Law Judge Robert P. Meehan discussed the issue of a protestant's standing. In his Initial Decision dated October 12, 1994, which became final by operation of law (Order entered December 23, 1994), ALJ Meehan said:

On the question of standing to protest an application to obtain a certificate of public convenience, it appears that a protestant must have some operating authority in actual or potential conflict, with the authority sought by an applicant to have the requisite standing to protest the application. *See, Application of Glen Alsace Water Company*, 45 PA P.U.C. 472 (1971), standing denied to uncertificated protestant; *Re Francis M. Bauer*, 50 PA P.U.C. 825 (1977), late-filed protest allowed where protestant had an application for conflicting authority pending; *Re Capitol Bus*

*Company*, 53 PA P.U.C. 590 (1979), call or demand authority conferred no standing to protest scheduled route service application; *Application of Ronald M. McDonald, t/d/b/a Rusmin Trucking*, A-00107696, F.2 (entered February 21, 1989), operations under temporary authority with permanent authority application pending sufficient to confer standing upon a protestant; *Application of Team Brokerage, Inc.*, A-00105267 (entered March 6, 1985) and *Application of Interstate Express, Inc.*, A-00111077 (entered April 1, 1994), certificated common carriers lack standing to protest applications for brokerage authority; and *Application of Commercial Aggregates Transportation and Sales, L.P.*, A-0011085, F0003 (entered June 22, 1994), certificated common carrier lacked standing to continue to prosecute the protest after restrictive amendment eliminated all areas of operating authority between the protestant and the applicant. I.D. 7-8.

ALJ Meehan then decided that a protestant having call or demand authority lacked standing to protest an application for amendment of a certificate of public convenience seeking additional service area in which to render limousine service. See also, *Application of Kutztown Area Transport*, Docket No. A-2009-2140250 (Order entered October 18, 2010); *Application of K&F Medical Transport*, Docket No. A-2008-2020353 (Order entered July 8, 2008).

The same result should occur here. Germantown does not hold any motor carrier passenger authority that is in conflict or potential conflict with the authority sought by Danach. Consequently, it cannot be adversely affected by the granting of Danach's application and is not, therefore, "aggrieved." Germantown possesses no greater interest in Danach's Application than any other member of the general public in having others comply with the law. This generalized interest is not sufficient to confer standing on Germantown to protest Danach's Application.

Danach's right to relief is clearly warranted and free from doubt. I will grant Danach's Preliminary Objection and dismiss Germantown's Protest.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate.
3. A protestant must have some operating authority in actual, or potential, conflict with the authority sought by an applicant to have the requisite standing to protest the application.
4. Germantown Cab Company has failed to demonstrate that it possesses any interest in the subject matter of this proceeding which is direct, immediate, and substantial.
5. Germantown Cab Company lacks standing to litigate its protest in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by Danach, LLC seeking the dismissal of the Protest filed by Germantown Cab Company is granted; and
2. That the Protest of Germantown Cab Company is dismissed for lack of standing.

Date: March 5, 2014

\_\_\_\_\_  
/s/  
Christopher P. Pell  
Administrative Law Judge