

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC
UTILITY COMMISSION**

In the Matter of:

ROBERT SARVER,)	
)	
)	Complaint Docket
Complainant)	No.: C-2014-2444541
)	
vs.)	
)	
BARNES PROFESSIONAL)	
LIMOUSINE SERVICE LLC,)	
)	
Respondent)	

MOTION TO DISMISS

AND NOW, comes Joshua S. Licata, Esquire, and Hal K. Waldman and Associates, who hereby respectfully files this Motion to Dismiss on behalf of Respondent, Barnes Professional Limousine Service LLC, in the above-captioned case.

1. Under law P-00981458, The Transportation Equity Act for the 21st Century Pub. L. No. 105-178 (TEA Act), the PUC only has the authority to promulgate and enforce rules and regulations regarding proper safety and insurance guidelines for “group and party carriers” of 16 or more passengers.
2. Moreover, the TEA Act, *inter alia*, modified 49 U.S.C.A. § 14501 by preempting State regulation relating to the authority to provide intrastate or interstate charter bus transportation. *Section 4016, TEA Act.*
3. While the TEA Act fails to define “bus,” it is defined at 49 CFR 393.5 as a vehicle designed to carry more than 15 passengers, including the driver.


4. Complainant rented a 26 person party bus. This bus that he contracted is not a luxury limousine as defined under the Code and therefore the statute citing the requirements for air conditioning guidelines do not apply to the vehicle that he rented, as it is not a safety or financial responsibility regulation.
5. The AC complaint is an issue regarding quality of service, which only applies to luxury limousines, which is outside the scope of the Public Utility Commission's jurisdiction in this matter.
6. Complainant claims that the vehicle did not have operable windows. In the charter limo bus rented by complainant, the windows do not roll up and down and are emergency exits only. All windows in the bus operate and can be opened in the event of an emergency.
7. No emergency occurred during the rental period that would require the windows to be opened. As such, the windows are in proper working order for their intended use. The ability to roll up and down a window for ventilation is not a requirement for group and party vehicles.
8. We have all maintenance records on the bus, including a valid inspection documenting the safety of the vehicle. *See Exhibit 1.*
9. The vehicle did not have any safety concerns the day of the rental.
10. At no point in time did the customer contact the PUC and notify them that they felt the vehicle they were in was unsafe.

11. Importantly, the fact that the customer continued to use the vehicle for the duration of the service in full, is proof that the customer was not concerned enough that the safety of the bus could possibly be in question.

12. Thus, since Complainant rented a party bus which had the capacity to carry 26 people, Complainant's claim is outside the scope of the PUC's jurisdiction and must be dismissed without prejudice.

WHEREFORE, for the reasons stated above, we ask that the PUC dismiss the Complainant's claims without prejudice due to the Pennsylvania Public Utility Commission's lack of jurisdiction over this matter.

Respectfully submitted:

By: 
Joshua S. Licata, Esquire
Attorney for the Respondent

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))	

ORDER OF COURT

AND NOW, to wit, this _____ day of September 2004, it is hereby

ORDERED, ADJUDGED and DECREED that:

- a. Complainant’s claim is Dismissed without prejudice, and this case is discontinued.

BY THE COURT:

J.

LED ODOMETER _____

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EXHIBIT
/

CERTIFICATE OF SERVICE

I hereby certify that above Motion to Dismiss has been served upon the following parties, via First Class Mail, Postage Pre-paid, or appropriate eService on this 13th day of January, 2015:

Katrina L. Dunderdale
Administrative Law Judge
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
Piatt Place, Suite 220
301 Fifth Avenue
Pittsburgh, PA 15222

Robert Sarver
340 Graham Road
Wexford, PA 15090
Complainant

Matt Barnes T/A Barnes Professional Limousine Service
3850 Walker Boulevard
Erie, PA 16509
Respondent

Respectfully submitted,

By: 

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