



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

ISSUED: December 12, 1997

REFER TO OUR FILE  
 IN REPLY PLEASE  
 A-00114058

DOCUMENT  
 FOLDER

BENJAMIN C DUNLAP JR ESQUIRE  
 NAUMAN SMITH SHISSLER & HALL  
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 P O BOX 840  
 HARRISBURG PA 17108-0840

Application of Stacia H. Grove, w/d/b/a Central Pennsylvania Limousine Service

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Wayne L. Weisman. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION IN ROOM B-20, NORTH OFFICE BUILDING, NORTH STREET AND COMMONWEALTH AVENUE, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty  
 Secretary

law  
 Encls.  
 Certified Mail  
 Receipt Requested

cc: ALJ WEISMANDEL/ OFFICE OF ALJ/ OSA/ PIO/ LAW/ T&S-WAGGONER/ T&S-LEGAL/ NEW FILING/ OUR FILE/  
 CHAIRMAN/ COMMISSIONERS  
 SCOTT POHLMAN ESQUIRE  
 ROBINSON & GERLADO  
 4407 N FRONT ST P O BOX 5320  
 HARRISBURG PA 17110-5320

Application of Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service

For the right to begin to transport, as a common carrier, by motor vehicle, persons, in limousine service, between points in the counties of York, Lancaster and Dauphin, and from points in the said territory, to points in Pennsylvania, and return.

~~STACIA H GROVE  
T/A CENTRAL PENNSYLVANIA LIMOUSINE SERVICE  
562 EAST HEATHERFIELD WAY  
RED LION PA 17356  
(717) 246-9409~~

~~RAYMOND D BENSCH PRESIDENT  
SUPERIOR LIMOUSINE SERVICE INC.  
PO BOX 122  
HERSHEY PA 17033  
(717) 939-5560~~

~~JOSEPHINE SALINGER PRESIDENT  
SALGALS INC T/D/B/A VILLA LIMOUSINE  
PO BOX 60402  
HARRISBURG PA 17106~~

~~JAMES J SALINGER  
UNIQUE LIMOUSINE SERVICE  
1301 NORTH CAMERON STREET  
HARRISBURG PA 17103~~

~~RONALD STOUGH  
KEYSTONE LIMOUSINE INC  
988 STONY BATTERY ROAD  
LANCASTER PA 17601~~

~~BENJAMIN C DUNLAP JR ESQUIRE  
NAUMAN SMITH SHISSLER & HALL  
18TH FLOOR 200 NORTH THIRD STREET  
PO BOX 840  
HARRISBURG PA 17108-0840  
(717) 236-3010  
Fax Number: (717) 234-1925  
(Representing applicant)~~

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By N/A 44110 36987

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Stacia H. Grove, : Docket Number  
t/d/b/a Central Pennsylvania :  
Limousine Service : A-00114058

Initial Decision Granting Motion To Dismiss Amended Protest

Before

Wayne L. Weismandel  
Administrative Law Judge

DOCUMENT  
FOLDER

History Of The Proceeding

**DOCKETED**  
DEC 17 1997

On June 5, 1997, Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service (applicant) filed an Application (Application) with the Pennsylvania Public Utility Commission (Commission) seeking a Certificate of Public Convenience authorizing her to render limousine service between points in York, Lancaster, and Dauphin Counties and from points in said territory to points in Pennsylvania, and return.

Notice of the filing of the Application was published in the Pennsylvania Bulletin on June 28, 1997, with Protests due not later than July 21, 1997.

On July 21, 1997, Protests (individually Protest, collectively Protests) were filed on behalf of Keystone Limousine, Inc. (Keystone), Salgals Inc., t/d/b/a Villa Limousine Service (Villa), Superior Transportation Services, Inc., t/d/b/a Superior Limousine Service of Harrisburg (Superior), Unique Limousine Service Inc. (Unique), and White Rose Limousine, Inc.

(White Rose) (individually protestant, collectively protestants), all represented by the same attorney.

On August 7, 1997, applicant filed Motions To Dismiss Or Strike (individually Motion, collectively Motions) each of the five filed Protests.

On August 18, 1997, protestants each filed an Answer (individually Answer, collectively Answers) to applicant's Motions.

By Notice dated August 28, 1997, an initial prehearing conference was scheduled for October 17, 1997, and the case was assigned to me.

By Prehearing Conference Order dated September 8, 1997, I directed the parties as to preparation for the prehearing conference, reminded them of the Commission's regulations pertaining to discovery and informal information exchange, and ordered that they submit prehearing conference memoranda at least three days before the scheduled prehearing conference.

Both applicant and protestants submitted their prehearing conference memoranda in a timely fashion.

The prehearing conference convened as scheduled on October 17, 1997. Applicant was represented by Benjamin C. Dunlap, Jr., Esquire, and protestants were represented by Scott W. Pohlman, Esquire.

At the prehearing conference, after hearing from both counsel, I announced that applicant's Motions would be granted

and all five Protests stricken for failure to comply with the provisions of 52 Pa.Code §§3.381(c)(1)(iv) and 5.52(a). Additionally, I advised counsel that Superior appeared to lack standing to protest the Application as the corporate entity (incorporated June 13, 1997) does not hold a Certificate of Public Convenience issued by the Commission.<sup>1</sup>

By Order Granting Motions To Strike (Order) dated October 17, 1997, all five Protests were stricken. In accordance with the provisions of 52 Pa.Code §5.101(f), protestants had ten days from service of the Order to file amended Protests.

On October 31, 1997, all five protestants filed Amended Protests (individually Amended Protest, collectively Amended Protests).

On November 10, 1997, applicant filed its Motion To Dismiss Amended Protest Of Superior Limousine Service (Superior Motion). The Superior Motion averred that Superior Transportation Services, Inc. lacked standing to protest the Application.

On November 25, 1997, Superior filed its Answer (Superior Answer).

Applicant's Superior Motion is procedurally ready to be ruled upon, and for the reasons stated herein will be granted.

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<sup>1</sup> The fictitious name Superior Limousine Service of Harrisburg is registered to Raymond D. Bensch, an individual. Mr. Bensch, trading and doing business as Superior Limousine Service of Harrisburg, holds Certificate of Public Convenience A-00110383, authorizing him to provide limousine service, in part, from points in Dauphin County to points in Pennsylvania, and return.

Findings Of Fact

1. An Amended Protest was filed in this case on October 31, 1997, by "Superior Transportation Services, Inc. t/a Superior Limousine Service".

2. The Amended Protest states that protestant possesses motor carrier common carrier authority from the Commission at "Pa. PUC A-00110383 and Pa. PUC A-00110383, Folder 1, Amendment A".

3. Attached as Exhibit "A" to the Amended Protest are copies of the Commission granted authorities at Docket Numbers A-00110383 and A-00110383, F0001, AmA.

4. The motor carrier common carrier authorities granted by the Commission at Docket Numbers A-00110383 and A-00110383, F0001, AmA are each granted to "Raymond D. Bensch, t/d/b/a Superior Limousine Service Of Harrisburg", an individual, not a corporation.

5. The Fictitious Name "Superior Limousine Service Of Harrisburg" is registered with the Pennsylvania Department of State Corporation Bureau, with the sole registrant being Raymond D. Bensch, an individual, not a corporation.

6. Superior Transportation Services, Inc. is a Pennsylvania corporation, incorporated June 13, 1997.

7. The Pennsylvania corporation Superior Transportation Services, Inc. holds no authority from the

Commission to operate as a motor carrier common carrier, nor is an application for such authority pending before the Commission.

### Discussion

In Pennsylvania, a corporation is an entity distinct from its shareholders even if the stock is entirely owned by only one shareholder. College Watercolor Group, Inc. v. William H. Newbauer, Inc., 468 Pa. 103, 360 A.2d 200(1976), In re Estate Of Hall, 517 Pa. 115, 535 A.2d 47(1987). In this case, Superior Transportation Services, Inc., a Pennsylvania corporation, and Raymond D. Bensch, an individual, are separate and distinct legal entities. Raymond D. Bensch, t/d/b/a Superior Limousine Service Of Harrisburg, holds motor carrier common carrier authority from the Commission. Superior Transportation Services, Inc. does not. The Amended Protest filed October 31, 1997, in this case was filed by Superior Transportation Services, Inc..<sup>2</sup> This protestant lacks standing and the Amended Protest must be dismissed.

Standing means that a party has a sufficient stake in an otherwise justiciable controversy to obtain a judicial resolution of that controversy. It is a concept utilized to determine if a party is sufficiently affected so as to insure that a justiciable controversy is presented. The requirement of

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<sup>2</sup> It is also noted that despite the Amended Protest being filed by Superior Transportation Services, Inc. t/a Superior Limousine Service, the corporate entity is not a registrant to the Fictitious Name (which is actually Superior Limousine Service Of Harrisburg).

standing is satisfied if it can be said that the party has a legally protectible and tangible interest at stake.

Black's Law Dictionary, 5th Ed., 1979, p. 1260.

The Commission has adopted the criteria used in Pennsylvania civil law practice to determine if a party has standing. Courier Express, Inc. v. F. L. Shaffer Company, Inc., Docket No. C-892462 (Order dated April 11, 1990).

In determining a question of standing, it is assumed that the action complained of is in fact contrary to some rule of law, but the question is whether the plaintiff is the proper person to challenge the alleged illegality. Wm. Penn Parking Garage v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

Standing requires that an aggrieved party have an interest which is substantial, direct, and immediate. To have a substantial interest means that there must be some discernible adverse effect to some interest of the complaining party other than the abstract interest of all citizens in having others comply with the law. To have a direct interest means that the aggrieved party must show causation of the harm to his interest by the matter of which he complains. To have an immediate interest means that the nature of the causal connection between the action complained of and the injury to the person challenging it is sufficiently close to present a justiciable controversy. In Re Francis Edward McGillick Foundation, 537 Pa. 194, 642 A.2d 467 (1994).

The Commission's regulations pertaining to motor carriers of passengers establish the following classes of passenger transportation: (a) scheduled route service, 52 Pa. Code §§29.301-29.305; (b) call or demand service, 52 Pa. Code §§29.311-29.317; (c) group and party service, 52 Pa. Code §§29.321-29.324; (d) limousine service, 52 Pa. Code §§29.331-29.335; (e) airport transfer service, 52 Pa. Code §§29.341-29.343; and (f) other services; paratransit, experimental, 52 Pa. Code §§29.351-29.355. An applicant granted a certificate of public convenience to provide one of the classes of passenger transportation cannot, lawfully, provide any of the other classes of passenger transportation.

In Application of Carriage Limousine Services, Inc., Docket No. A-00108361, F.1, Am-B, Administrative Law Judge Robert P. Meehan thoroughly discussed the issue of a protestant's standing to protest an application for a Certificate of Public Convenience. 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 PUC 472 (1971), standing denied to uncertificated protestant; Re Francis M. Bauer, 50 PA PUC 825 (1977), late-filed protest allowed where protestant had an

application for conflicting authority pending; Re Capitol Bus Company, 53 PA PUC 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.

Similarly, in Application of William F. Remley and Nora K. Remley, Copartners, t/d/b/a "K" Cab Company, Docket No. A-100878, F.3, Am-A, 1988 PA PUC LEXIS 158, Administrative Law Judge Morris J. Solomon's Initial Decision (which became final by operation of law, Order entered June 28, 1988) held that a protestant having call or demand authority in parts of the applicant's proposed service area lacked standing to protest an

application for amendment of a Certificate of Public Convenience to authorize the applicant to provide paratransit service.

In the instant case, the corporate protestant neither has motor carrier common carrier authority nor has pending an application for such authority. Consequently, Superior cannot be adversely affected by the granting of the Application and is not, therefore, "aggrieved". In short, there is no basis to conclude that Superior possesses any greater interest in this Application than any other member of the general public in having others comply with the law. This generalized interest is not the legally protectible and tangible interest required to make Superior a proper party to challenge the Application.

The case of Re L & H Trucking Company, Inc., 55 Pa. PUC 469 (1982), does not require a different conclusion.

The applicant in L & H Trucking sought authority to transport industrial waste in tank trucks from points in Pennsylvania to the city of York, York County. A letter-protest to the application was filed by Ellie Paules, as a taxpayer and concerned citizen. The protest was based primarily on safety and environmental concerns. The applicant moved to dismiss the protest because Ms. Paules did not hold authority from the Commission and, thus, lacked standing to protest the application. By Initial Decision, dated July 10, 1981, the protest was dismissed, and the application referred for modified procedure.

Upon Commission review of the Initial Decision of Chief Administrative Law Judge William Shane, the case was remanded for an evidentiary hearing where evidence was to be presented, inter alia, regarding protestant's specific interest in the application proceeding (i.e., Ms. Paules' standing). However, that hearing never occurred and on May 9, 1984, the case was marked closed for the failure of the applicant to prosecute the application. The question of the protestant's standing in L & H Trucking was, therefore, never decided and the discussion of standing in the reported Order may be regarded as lacking in precedential value.

The Amended Protest, filed by an uncertificated protestant, must be dismissed for lack of standing and applicant's Superior Motion granted.

#### Conclusions of Law

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.

2. Superior Transportation Services, Inc., a Pennsylvania corporation, is a separate and distinct legal entity from its shareholder, Raymond D. Bensch.

3. Superior has failed to demonstrate that it possesses any interest in the subject matter of this proceeding which is direct, immediate, and substantial.

4. Superior's asserted interest is no greater than the common interest of all citizens in procuring obedience to the law.

5. Any adverse impact to Superior resulting from approval of the Application will be a remote consequence of the Commission's determination.

6. Superior lacks standing to litigate its Amended Protest in this proceeding.

7. The Amended Protest of Superior should be dismissed for lack of standing and the Motion of applicant should be granted.

Order

THEREFORE,

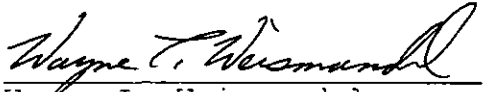
IT IS ORDERED:

1. That the amended protest filed by Superior Transportation Services, Inc., t/a Superior Limousine Service, to the Application of Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service, at Docket No. A-00114058, is dismissed for lack of standing to protest the application.

2. That the initial and further hearing scheduled in the above-captioned case for December 16 and 17, 1997, shall proceed as scheduled with the remaining protestants Keystone

Limousine, Inc., Salgals Inc., t/d/b/a Villa Limousine Service,  
Unique Limousine Service Inc., and White Rose Limousine, Inc..

Date: DECEMBER 1, 1997

  
Wayne L. Weismandel  
Administrative Law Judge