

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PA.P.U.C.  
DOCKET NUMBER  
PROTHONARY'S OFFICE  
A-00114058

ORDER

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.

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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).

By Initial Decision Granting Motion To Dismiss Amended Protest (Initial Decision) dated December 1, 1997, issued December 12, 1997, the Superior Motion was granted and the Amended Protest of Superior was dismissed.

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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.

In accordance with the provisions of 66 Pa.C.S. §332(h), the Initial Decision became final without further Commission action. Final Order entered January 14, 1998.

The initial hearing in this case convened as scheduled on December 16, 1997. Applicant's counsel raised certain problems regarding discovery directed to remaining protestants (Tr. 26 - 32, 108 - 115). Counsel for applicant and counsel for protestants were encouraged to resolve these problems and were able to reach an agreement that, at least initially, allowed the hearing to proceed while further discovery negotiations and submissions occurred. Applicant's counsel did not move to compel protestants to answer the outstanding Interrogatories regarding financial information that were the root of the problem (Tr. 114 - 115).

On February 4, 1998, applicant filed and served a Motion For Sanctions seeking the imposition of sanctions authorized by 52 Pa.Code §§5.371 and 5.372 on Keystone, Villa, Unique, and White Rose. Applicant correctly states that the protestants have not submitted objections to applicant's Interrogatories pursuant to 52 Pa.Code §5.342, nor have they sought protective orders pursuant to 52 Pa.Code §5.362, nor have they sought protective orders pursuant to 52 Pa.Code §5.423 (pertaining to proprietary information). However, applicant's request for sanctions is premature in that no Motion To Compel directed against protestants has ever been submitted.

In light of the fact that protestants are provided the same amount of time to answer both a Motion To Compel and a Motion For Sanctions [five days, 52 Pa.Code §§5.342(e)(1), 5.371(b)], I will deem applicant's Motion For Sanctions filed and served February 4, 1998, to be a Motion To Compel directed to the protestants.

The time within which protestants' answers to applicant's Motion To Compel having expired without protestants submitting answers, applicant's Motion To Compel is procedurally ready to be ruled upon.

In accordance with 52 Pa.Code §5.341(c), applicant's Interrogatories included requests that protestants provide copies of either audited financial statements or compilations or reviews of the corporation's finances by a certified public accountant, bookkeeping service provider or any other person, copies of corporate tax returns, copies of sales journals (also known as cash receipts journals or fare journals), and copies of excise or gasoline tax reports for liquid fuel taxes. In each case, copies of the described documents were requested for the last three years. Additionally, copies of any reports regarding the protestants' finances submitted to the Commission within the past three years (including assessment reports required by 52 Pa.Code §29.43) were included in applicant's request for documents as part of applicant's Interrogatories.

Villa, Unique, and White Rose provided applicant with copies of their filed assessment reports for the years 1995 and 1996

only. Keystone did not provide anything. As to all the other documents sought by applicant, protestants' answers to applicant's Interrogatories either contend that they are "privileged" (without specifying the nature of the alleged privilege), constitute "proprietary information" (without seeking a protective order pursuant to 52 Pa.Code §5.423), or contend that they are available through the Commission. These responses to Interrogatories are clearly not sufficient. They do not provide the requested information to applicant. Procedurally, they do not constitute objections nor a request for either type of protective order. Further, protestants have not timely responded to applicant's Motion To Compel. Under these circumstances, I have no choice but to grant applicant's Motion To Compel.

Order

THEREFORE,

IT IS ORDERED:


1. That Keystone Limousine, Inc., Salgals Inc., t/d/b/a Villa Limousine Service, Unique Limousine Service Inc., and White Rose Limousine, Inc. shall fully and completely answer the Interrogatories and produce the documents requested by Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service, to include copies of either audited financial statements or compilations or

reviews of the corporation's finances by a certified public accountant, bookkeeping service provider or any other person, copies of corporate tax returns, copies of sales journals (also known as cash receipts journals or fare journals), and copies of excise or gasoline tax reports for liquid fuel taxes, in each case, for the last three years.

2. That Keystone Limousine, Inc., Salgals Inc., t/d/b/a Villa Limousine Service, Unique Limousine Service Inc., and White Rose Limousine, Inc. shall fully and completely answer the Interrogatories and produce the documents requested by Stacia H. Grove, t/d/b/a Central Pennsylvania Limousine Service, to include copies of any reports regarding the protestants' finances submitted to the Commission within the past three years (including assessment reports required by 52 Pa.Code §29.43).

3. That Keystone Limousine, Inc., Salgals Inc., t/d/b/a Villa Limousine Service, Unique Limousine Service Inc., and White Rose Limousine, Inc. shall answer the Interrogatories and produce the documents as described in Order Paragraphs 1 and 2, above, not later than Tuesday, February 17, 1998.

Date: FEBRUARY 10, 1998

  
Wayne L. Weismandel  
Administrative Law Judge