

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	C-2018-3000163
	:	
Black Tie Limousine Services, Inc.	:	

RECOMMENDED DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision recommends that the Public Utility Commission (Commission) cancel the certificate of public convenience (CPC) held by Black Tie Limousine, Inc. (Black Tie) and impose a \$500 civil penalty.¹ The reason for this recommendation is because Black Tie has not maintained proof of insurance coverage as required by the Commission.²

HISTORY OF THE PROCEEDING

On March 14, 2018, the Commission's Bureau of Investigation and Enforcement (BIE) filed a formal complaint with the Commission against Black Tie at Docket No. C-2018-3000163. BIE averred that Black Tie had failed to maintain evidence of liability insurance on file with the Commission as required by the Commission's regulations. BIE proposed a civil penalty for this violation of \$500 and requested cancellation of Black Tie's CPC. BIE asserted

¹ The CPC was issued at Docket No. A-00118861 on August 06, 2003.

² As noted later in this decision, Black Tie did not appear for the hearing scheduled for this matter.

that Black Tie, by failing to maintain evidence of insurance on file with the Commission, has violated 66 Pa. C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

On May 11, 2018, Black Tie filed an answer to the complaint asserting that it had placed its “certificate” on suspension with the Philadelphia Parking Authority (PPA) on January 31, 2018.³ Black Tie denied any violation of the Public Utility Code or regulation of the Commission. Black Tie requested that the Complaint be dismissed as moot.⁴

On November 25, 2019, the Commission received a civil penalty payment of \$250 from Black Tie. However, because this payment was in the form of a personal check, it was returned to Black Tie along with an instruction that payment must be in the form of a certified check, money order, or check from Black Tie made payable to “Commonwealth of Pennsylvania,” citing 52 Pa. Code § 1.4.

On January 2, 2020, this case was assigned to me and a hearing Notice was issued setting February 5, 2020, as the date for a telephonic hearing in this matter. The Notice stated: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On January 7, 2020, a prehearing Order was issued. The prehearing Order stated, “**You must call in and participate, or you may lose this case.**” (emphasis in original).

Both the Notice and the prehearing Order were sent by U.S. Mail to Black Tie at Black Tie’s principal place of business, which address is also listed on the complaint. Neither document was returned as undeliverable.

³ It is unclear what authority Black Tie claims it put on suspension with the PPA, but Black Tie cannot suspend its CPC through such an action.

⁴ The Answer was filed by a corporate officer of Black Tie, not by an attorney.

On January 8, 2020, a second Secretarial letter was sent to Black Tie with instructions to remedy the deficiency in payment after the November 25, 2019 Secretarial letter was returned to the Commission as undeliverable.

On January 23, 2020, counsel for BIE filed a Motion for Continuance of the hearing scheduled for February 5, 2020. Black Tie had no objection to the Continuance, and the Motion was granted.

On January 30, 2020, a hearing Notice was issued rescheduling the hearing for March 17, 2020.

On February 10, 2020, a check for \$250 was remitted by Black Tie to the Secretary of the Commission.

On March 16, 2020, the office building of the Commission in Harrisburg, Pennsylvania was closed due to the 2020 Covid-19 Pandemic, and the hearing scheduled for March 17, 2020 was cancelled.

On April 20, 2020, a hearing Notice was issued setting May 20, 2020, as the date for a rescheduled telephonic hearing in this case. As with all prior hearing Notices, the Notice contained this language: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original). The hearing Notice was not returned to the Commission.

On May 20, 2020, a telephonic hearing convened as scheduled. Matthew Fallings, Esquire, appeared representing BIE. No one appeared for Black Tie. Counsel for BIE then made a Motion for Default Judgment which I took under advisement.⁵ Counsel for BIE presented the testimony of David Canzoneri, a Compliance Specialist employed by the Commission. Counsel also submitted three exhibits that were received into evidence: BIE

⁵ In the event that the Motion was not granted, counsel also presented BIE’s evidence as is reflected in the record of the hearing on May 20, 2020.

Exhibit 1: a Form E certification of Respondent, Black Tie Limousine Service Inc.'s, liability insurance filed by American Country Insurance Company (American Country), received on August 23, 2017; BIE Exhibit 2: a Form K cancellation of Respondent's liability insurance filed by American Country, received on December 14, 2017; and BIE Exhibit 3: a Notice of Suspension of PUC Operating Authority sent to Respondent on February 13, 2018.

On May 29, 2020, a hearing transcript of 21 pages was filed with the Commission along with the three BIE Exhibits that had been received into the record. The record closed on that date. Black Tie has not contacted the Office of Administrative Law Judge (OALJ) at any time.

This decision recommends that the Commission sustain BIE's Complaint, impose a civil penalty of \$500, and cancel Black Tie's CPC.

FINDINGS OF FACT

1. The Complainant is the Commission's Bureau of Investigation and Enforcement.
2. The Respondent is Black Tie Limousine Services Inc., a Commission certificated common carrier.
3. On March 14, 2018, BIE filed a formal complaint with the Pennsylvania Public Utility Commission against Black Tie at Docket No. C-2018-3000163, alleging failure to maintain proof of liability insurance.
4. On May 11, 2018, Black Tie filed an answer to the complaint.
5. On January 7, 2020, a prehearing Order was issued which stated: "**You must call in and participate, or you may lose this case.**" (emphasis in original).

6. On April 20, 2020, a hearing Notice was issued setting May 20, 2020 at 10:00 a.m., as the date and time for a rescheduled telephonic hearing in this case.

7. Both the prehearing Order and the hearing Notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

8. The hearing Notice and the prehearing Order were sent to Black Tie by first-class mail to Black Tie's principal place of business, which is the same address on the complaint.

9. The hearing Notice and prehearing Order sent to Black Tie were not returned to the Commission as undeliverable.

10. No representative for Black Tie appeared on the scheduled date and time for the hearing.

11. On December 14, 2017, a Form K cancelling Black Tie's insurance was filed with the Commission. Tr. at 15, BIE Exhibit 2.

12. On February 13, 2018, a suspension letter was sent to Black Tie suspending Black Tie's operating authority for failure to maintain proof of insurance. Tr. at 17; BIE Exhibit 3.

13. As of May 19, 2020, Black Tie did not have evidence of insurance on file with the Commission. Tr. at 17.

DISCUSSION

As the proponent of a rule or order, a complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, a complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990), *app. den.*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlt. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlt. 1993), 2 Pa.C.S. § 704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan)*, 612 A.2d 434 (Pa. 1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa.Super. 1960), *Murphy v. Pa. Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlt. 1984).

At hearing, BIE presented evidence in the form of exhibits and testimony that established that Black Tie has failed to maintain evidence of insurance with the Commission. Black Tie did not appear at the hearing on May 20, 2020. BIE has met its burden of proof, and I agree with BIE's request that Black Tie's operating authority should be cancelled. Further, I agree with BIE that Black Tie should pay a \$500 civil penalty for its failure to maintain evidence of insurance.⁶ With regard to BIE's request that the registration of Black Tie's vehicles be suspended, given the age of the complaint and the lack of any current information as to whether Black Tie is even operating, I believe that cancellation of Black Tie's CPC is an adequate remedy, here.

⁶ This amount is in addition to any other penalty that Black Tie may have paid in this case.

The Commission's authority for imposing civil penalties can be found at 66 Pa.C.S. § 3301 which provides in pertinent part:

§ 3301. Civil penalties for violation.

(a) General rule. -- If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. . . .

66 Pa.C.S. § 3301(a).

The present standard for the imposition of a civil penalty was developed in *Rosi v. Bell-Atlantic Pennsylvania*, Docket No. C-00992409 (Order entered March 16, 2000) (*Rosi*) and *Pa. Pub. Util. Comm'n v. NCIC Operator Serv.*, Docket No. M-00001440 (Order entered December 21, 2000), where the Commission held that violations would be subject to the *Rosi* standards. Subsequently, the Commission adopted a policy statement enumerating the same standards. Through case law, the Commission has directed that litigated proceedings seeking to impose a civil penalty include an analysis of these standards, which are as follows:

§ 69.1201. Factors and standards for evaluating litigated and settled proceedings involving violations of the Public Utility Code and Commission regulations—statement of policy.

* * *

(c) The factors and standards that will be considered by the Commission include the following:

(1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.

(2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.

(3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.

(4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.

(5) The number of customers affected and the duration of the violation.

(6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c).

Applying the factors set forth in Section 69.1201(c), I conclude the following:

Whether the conduct at issue was of a serious nature. The failure of a motor carrier to maintain insurance is a serious matter. The likelihood of serious or catastrophic injury in a motor vehicle accident requires that motor carriers maintain adequate insurance to protect their passengers and the public. 52 Pa.Code § 69.1201(c) (1).

Whether the resulting consequences of the conduct at issue were of a serious nature. There is no evidence that any patrons of Black Tie were directly harmed by the failure to maintain insurance, but it is foreseeable that harm could have occurred. A valid claim for loss must be paid, and a certificate holder must have the means to pay such a claim. 52 Pa.Code § 69.1201(c) (2).

Whether the conduct at issue was deemed intentional or negligent. Black Tie was placed on notice that its insurance had been cancelled. The conduct at issue, failure to maintain insurance coverage, was therefore intentional. 52 Pa.Code § 69.1201(c) (3).

Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. Strictly speaking this factor is not relevant in that it is not an issue whether Black Tie's internal practices and procedures caused the lapse of insurance coverage. That might have been a matter in mitigation, but Black Tie did not appear at hearing and offered no defense. 52 Pa.Code § 69.1201(c) (4).

The number of customers affected and the duration of the violation. While it is not known how many customers were potentially affected, any customer could have been affected. Given that Black Tie is still certificated, the violation continues to the present as Black Tie has not petitioned to abandon its authority. 52 Pa.Code § 69.1201(c) (5).

The compliance history of the regulated entity which committed the violation. There was no evidence presented of prior violations by Black Tie. 52 Pa.Code § 69.1201(c) (6).

Whether the regulated entity cooperated with the Commission's investigation. In this instance, an extensive investigation was not necessary, as the case has been established by notice from Black Tie's former insurance carrier. 52 Pa.Code § 69.1201(c) (7).

The amount of the civil penalty or fine necessary to deter future violations. Given that it is recommended that Black Tie's operating authority be cancelled, future violations by Black Tie *as a certificated carrier* are unlikely. However, it is recommended that a \$500 civil penalty be imposed given the potentially serious consequences of a lapse in motor carrier insurance coverage. 52 Pa.Code § 69.1201(c) (8).

Past Commission decisions in similar situations/Other relevant factors. A review of past cases indicates that motor carriers with lapsed insurance coverage usually request that their operating authority be cancelled, or they make no answer and that authority is cancelled expeditiously. In this case, Black Tie filed an answer to the complaint claiming that it had suspended its authority with the PPA, thereby putting BIE to the proof and requiring a formal hearing which Black Tie did not attend despite having received notice of the same. This needless expenditure of Commission resources warrants a penalty. 52 Pa.Code §§ 69.1201(c) (9), (10).

With respect to BIE's Motion for a Default Judgment, the additional facts elicited at hearing were necessary to render a Decision; therefore, in light of the discussion above, this Motion is denied as moot.

In sum, BIE has met its burden of proof. I also agree with BIE that a civil penalty is warranted and recommend that Black Tie be directed to pay a \$500 civil penalty for its failure to maintain evidence of insurance. Finally, it is also recommended that Black Tie's operating authority be cancelled.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. 66 Pa.C.S. §§ 701, 512.

2. It is the responsibility of a certificate holder to coordinate with its insurance carrier to see that the documents verifying proof of adequate insurance are filed with the Commission. 52 Pa.Code § 32.2(c).

3. A common carrier or contract carrier of passengers may not engage in intrastate commerce and a certificate or permit will not be issued, or remain in force, except as provided in § 32.15 (relating to applications to self-insure) until there has been filed with and approved by the Commission a certificate of insurance by an insurer authorized to do business in this Commonwealth, to provide for the payment of valid accident claims against the insured for bodily injury to or the death of a person, or the loss of or damage to property of others resulting from the operation, maintenance or use of a motor vehicle in the insured authorized service. 52 Pa.Code § 32.11(a).

4. If any public utility or any other person or corporation subject to this part, shall violate any of the provisions of this part, or shall do any matter or thing herein prohibited; or shall fail, omit, neglect, or refuse to perform any duty enjoined upon it by this part; or shall fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final direction, requirement, determination or order made by the commission, such public utility, person or corporation . . . shall forfeit and pay to the Commonwealth a sum not exceeding \$1,000 to be recovered by an action of assumpsit instituted in the name of the Commonwealth. 66 Pa.C.S. § 3301.

5. The Commission's regulations provide a Policy Statement regarding the factors and standards to be used when evaluating litigated and settled proceedings. 52 Pa.Code § 69.1201; *see also, Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-0092409 (Final Order entered February 10, 2000).

6. The Respondent, by failing to maintain evidence of insurance on file with this Commission, violated 66 Pa. C.S. § 512, 52 Pa. Code § 32.2(c), and 52 Pa. Code § 32.11(a), § 32.12(a) or § 32.13(a).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the formal complaint filed by the Pennsylvania Public Utility's Commission's Bureau of Investigation and Enforcement at Docket No. C-2018-3000163 be sustained.

2. That the operator authority of Black Tie Limousine Services, Inc. under the certificate of public convenience at Docket No. A-00118861 be cancelled.

3. That Black Tie Limousine Services, Inc. pay a civil penalty of \$500 by sending a certified check or money order payable to "Commonwealth of Pennsylvania" within thirty (30) days from entry of the Final Commission Order to:

Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

4. That the Motion for Default Judgment made by the Commission's Bureau of Investigation and Enforcement is denied as moot.

5. That this case be marked closed.

DATED: August 10, 2020

/s/
Dennis J. Buckley
Administrative Law Judge