

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement	:	
	:	
	:	
v.	:	C-2019-3011258
	:	
Herbert L. Joseph, II t/a J. N. Limousine	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This Initial Decision sustains the Formal Complaint filed by the Bureau of Investigation & Enforcement of the Pennsylvania Public Utility Commission (Commission) against Herbert L. Joseph, II t/a J. N. Limousine, cancels the Certificate of Public Convenience, and denies the request to impose a civil penalty because Respondent effectively abandoned operation of the limousine service several months prior to the expiration of its motor vehicle insurance.

HISTORY OF THE PROCEEDINGS

Herbert L. Joseph, II t/a J. N. Limousine (J. N. Limousine, Mr. Herbert, or Respondent) was issued a Certificate of Public Convenience (Certificate) for limousine service on October 16, 2003, at Docket No. A-00114384.

On July 5, 2019, the Commission's Bureau of Investigation & Enforcement (I&E or Complainant) filed a Complaint against J. N. Limousine for failure to maintain evidence of insurance on file with the Commission. In the Complaint, I&E specifically alleged that J. N. Limousine violated the Public Utility Code (Code), specifically, 66 Pa.C.S. § 512, and the regulations at 52 Pa.Code § 32.2(c), and 52 Pa.Code §§ 32.11(a), 32.12(a), or 32.13(a), by failing to maintain evidence of liability insurance. I&E recommended imposing on J. N. Limousine a civil penalty of \$500 for this violation.

On July 5, 2019, the Complaint was mailed to J. N. Limousine by certified mail and contained a Notice informing the Company that it must file an Answer within twenty (20) days of the date of service of the Complaint. The Complaint also informed J. N. Limousine that if it failed to file an Answer, pay the civil penalty, and/or have its insurer file evidence of insurance, I&E would request that the Commission issue an order which would: (1) cancel J. N. Limousine's Certificate; (2) impose a civil penalty in the amount of \$500; (3) request other remedies as the Commission may deem appropriate, which may include the suspension of vehicle registrations; and (4) impose an additional fine should cancellation occur.

On July 17, 2019, Mr. Herbert filed a handwritten letter (Answer) in response to the Complaint. In the Answer, Mr. Herbert asserted as follows: (1) he had not operated any vehicle since being rammed by a 16 wheeler on February 1, 2019; (2) he was experiencing medical problems; (3) he had had no income since February 1, 2019; (4) he had allowed J. N. Limousine's insurance to lapse on May 11, 2019;¹ and (5) he intended to revive his business as soon as he got well. Mr. Herbert also asked the Commission for more time "to pay the assessment and regain insurance."

On September 18, 2019, the Commission's Bureau of Technical Utility Services (TUS) caused a *Secretarial Letter* to issue, which cancelled J. N. Limousine's Certificate,

¹ The effective cancellation date of Complainant's insurance coverage was June 20, 2019. Tr. 26-27; I&E's Exhibit 2.

imposed a \$500 civil penalty, and requested suspension of the J. N. Limousine's vehicle registrations.²

In response to the *Secretarial Letter*, J. N. Limousine filed a Petition for Reconsideration from Staff Action/Cancellation (Petition) on September 26, 2019. In the Petition, J. N. Limousine asked the Commission to reconsider the cancellation of its Certificate. Additionally, Mr. Herbert reiterated that J. N. Limousine had not operated a vehicle since February 1, 2019, and that J. N. Limousine paid for its insurance until it ran out of money. Mr. Herbert further asserted that as the sole proprietor of J. N. Limousine, he had experienced medical issues which had interfered with business operations. However, Mr. Herbert asserted that J. N. Limousine was fighting hard to reach a point when it could resume service. Furthermore, the Petitioner averred that due to his medical issues, he was currently receiving Supplemental Security Income (SSI) from the Social Security Administration. Copies of Mr. Herbert's medical reports and SSI payments were attached to the Petition.

On November 14, 2019, the Commission issued an Opinion and Order granting J. N. Limousine's Petition and rescinding the *Secretarial Letter*.³ The Commission reasoned that while Mr. Herbert's July 17, 2019, handwritten letter did not strictly comply with the Commission's requirements for the filing of an answer pursuant to 52 Pa.Code §§ 5.61(b)(1)-(4), nevertheless, the letter constituted an Answer to I&E's Complaint. Therefore, the Commission ruled the matter should have been referred to the Office of Administrative Law Judge (OALJ) for appropriate proceedings. Accordingly, the case was assigned to the OALJ.⁴

² The September 18, 2019 *Secretarial Letter* is a corrected version of a Secretarial Letter issued on September 3, 2019, which did not contain an appropriate signature block.

³ Rescission of the *Secretarial Letter* procedurally voided the cancellation of J. N. Limousine's Certificate.

⁴ As the Commission is statutorily structured, its investigative and enforcement bureau and its adjudicative division perform separate functions: I&E conducts investigations into alleged violations of the Commission's statutes, regulations or orders, and when I&E determines that a violation has occurred, I&E files a formal complaint, which is heard by an administrative law judge (ALJ) from the Commission's adjudicative division. If the ALJ finds that a violation has occurred, he or she then determines an appropriate penalty. See 66 Pa.C.S. §§ 331, 308.2, 3301.

By Notice dated November 15, 2019, the Parties were informed that this proceeding was assigned to me, as the presiding ALJ, for an initial telephonic hearing on January 14, 2020, at 10:00 a.m. On November 21, 2019, a Prehearing Order outlining the relevant procedural rules for the hearing was issued to the Parties. The January 14, 2020 hearing convened as scheduled. I&E was represented by Matthew C. Fallings, Esquire. Mr. Herbert appeared, self-represented. Prior to the receipt of testimony, the Parties briefly engaged in settlement discussions, which resulted in a joint request for continuance of the hearing to achieve an amicable resolution of the Complaint. The Parties were granted approximately 45 days to achieve a settlement. However, by March 2, 2020, the Parties had not reached a settlement. Therefore, a second Notice was issued to the Parties on March 2, 2020, scheduling a further telephonic hearing for April 8, 2020, at 10:00 a.m. On March 17, 2020, the Commission's offices in Pittsburgh were closed due to the COVID-19 pandemic. As a result, on March 17, 2020, a third Notice was issued to the Parties informing them that the April 8, 2020 further telephonic hearing was cancelled and would be rescheduled. On April 17, 2020, a fourth Notice was issued to the Parties informing them that a further hearing would be held in this matter on May 21, 2020, at 10:00 a.m.

The May 21, 2020 further hearing convened as scheduled. Attorney Fallings appeared on behalf of I&E, and he called one witness, Tatjana Roth, a TUS compliance supervisor. Ms. Roth sponsored I&E's Exhibits 1 through 3, which were admitted into the record. Mr. Herbert testified on his own behalf; however, he did not sponsor any exhibits.⁵

The two hearings held in this proceeding generated a 72-page transcript. The record was closed by an Interim Order entered on June 22, 2020. This case is procedurally ready for ruling.

⁵ As a sole proprietor and owner of the trademark, J. N. Limousine, (Tr. 19-20), Mr. Herbert was able to represent himself as an individual. Under the regulations, individuals may represent themselves. *See* 52 Pa. Code § 1.21(a).

FINDINGS OF FACT

1. Complainant is the Commission's Bureau of Investigation & Enforcement.
2. Respondent is Herbert L. Joseph II, t/a J. N. Limousine with an address at 432 Parkwood Road, Pittsburgh, PA 15210. Tr. 19.
3. The Commission issued Respondent a Certificate of Public Convenience on October 16, 2003, at Docket No. A-00114384, for limousine service.
4. The only motor vehicle utilized in Respondent's limousine service was "a 2009 Cadillac DTS Sedan with 240,000 miles on it (Cadillac)." Tr. 52.
5. On October 5, 2018, J. N. Limousine had evidence of insurance on file with the Commission, effective from October 22, 2018. Tr. 26; I&E Exhibit 1.
6. On February 1, 2019, Respondent's Cadillac was a total loss resulting from a motor vehicle accident. Tr. 45, 48, 50.
7. Respondent has not operated a limousine service since February 1, 2019. Tr. 38, 42, 45, 47.
8. Respondent maintained motor vehicle insurance on the Cadillac until June 20, 2019, after which Respondent could no longer afford the insurance. Tr. 42,45-46; I&E Exhibit 2.
9. On May 17, 2019, Complainant received from Respondent's insurance carrier a Form K, Notice of Cancellation of Motor Carrier Insurance Policies. Under the Notice, Respondent's motor vehicle insurance was cancelled effective June 20, 2019. Tr. 27; I&E Exhibit 2.

10. On June 17, 2019, the Commission issued Respondent a Notice of Suspension of PUC Limousine Operating Authority (Suspension Notice), effective June 20, 2020, for failure to maintain evidence of insurance on file with the Commission. Tr. 28-29; I&E's Exhibit 3.

11. The Suspension Notice stated the following:

If this Commission does not receive acceptable evidence of insurance within ten (10) days of the suspension date, a Complaint will be instituted against you for failure to comply with the Commission's insurance requirements. The Complaint may result in the cancellation of your PUC operating authority.

Id.

12. Respondent did not submit evidence of insurance to the Commission within ten (10) days of the Suspension Notice. Tr. 29, 54.

13. On July 5, 2019, I&E filed a Complaint against J. N. Limousine for failure to maintain evidence of insurance on file with the Commission as required by the Commission's regulations.

14. I&E requests that the Commission impose a \$500.00 penalty upon J. N. Limousine for failure to maintain evidence of insurance as required by the Commission's regulations and cancel J. N. Limousine's Certificate. Tr. 29, 61-62.

15. Herbert L. Joseph, II, age 61, trading as J. N. Limousine, has as his sole source of income a monthly Social Security Supplement Income benefit in the amount of \$805.00. Tr. 55, 57.

16. J. N. Limousine requests that the requested \$500.00 penalty be removed. Tr. 46.

17. J. N. Limousine requests that the Commission grant him a reasonable amount of time to revive his limousine service and thereby retain his Certificate. Tr. 54, 69.

Legal Standards

Burden of Proof

As the proponent of a rule or order, Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, Complainant must show that Respondent is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990). 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 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by Respondent. *Selling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon presentation by Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of Complainant shifts to Respondent. If the evidence presented by Respondent is of co-equal value or "weight," the burden of proof has not been satisfied. Complainant now has to provide some additional evidence to rebut that of Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on

the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

Insurance Requirements

Section 512 of the Code authorizes the Commission to require certificated motor carriers to maintain insurance. Section 512 states, in pertinent part as follows:

§ 512. Power of commission to require insurance.

The commission may, as to motor carriers, prescribe, by regulation or order, such requirements as it may deem necessary for the protection of persons or property of their patrons and the public, including the filing of surety bonds, the carrying of insurance, or the qualifications and conditions under which such carriers may act as self-insurers with respect to such matters. . . .

66 Pa.C.S. § 512.

Sections 32.2(c) and 32.11(a) of the Commission's regulations, respectively, and relative to proof of insurance filings provide as follows:

§ 32.2. Insurance forms and procedures.

(c) Filing and copies. An original of each certificate of insurance, surety bond and notice of cancellation shall be filed with the Commission. An approved copy will be returned to sender if a self-addressed, stamped envelope is enclosed with the filing.

52 Pa.Code § 32.2(c).

32.11. Passenger carrier insurance.

(a) 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, . . . 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. . . .

52 Pa.Code § 32.11(a).

Civil Penalties

Sections 3301(a) and (b) of the Public Utility Code, authorizes the Commission to impose a maximum civil penalty not exceeding a \$1,000.00 per day for violations of a Commission statute, regulation, or order. 66 Pa.C.S. §§ 3301(a) and (b).

Analysis

Violation of the Code

J. N. Limousine was issued its Certificate of Public Convenience on October 16, 2003, at Docket No. A-00114384, for limousine service. To provide limousine service, J. N. Limousine operated a single vehicle, a 2009 Cadillac DTS Sedan. Tr. 52. As a certificated motor carrier, J. N. Limousine was required to maintain insurance on its vehicle under Section 512 of the Code, cited above.

I&E through its witness, Ms. Roth, established the pertinent chronology of J. N. Limousine's insurance maintenance. On October 5, 2018, J. N. Limousine had evidence of insurance on file with the Commission, effective from October 22, 2018. Tr. 26; I&E Exhibit 1, Insurance Form E (Proof of Motor Carrier Insurance).

On May 17, 2019, TUS received Form K Uniform Notification of Cancellation of Motor Vehicle Carrier Insurance Policies from J. N. Limousine's insurance carrier. Tr. 26-27; I&E Exhibit 2. The cancellation was effective June 20, 2019. *Id.*

On June 17, 2019, the Commission issued J. N. Limousine a Suspension Notice that its operating authority was suspended effective June 20, 2019, for failure to maintain evidence on file with the Commission. Tr. 28; I&E Exhibit 3. The Suspension Notice informed J. N. Limousine that failure to file evidence of insurance with the Commission within ten (10) days of the date of the notice would cause the filing of a complaint against J. N. Limousine for failure to comply with the Commission's insurance requirement. *Id.* Additionally, J. N.

Limousine was cautioned that the complaint may result in the cancellation of its operating authority. *Id.*

On June 20, 2019, J. N. Limousine, a certificated motor carrier, was required to maintain evidence of insurance on file with the Commission. Mr. Herbert, trading as J. N. Limousine, admitted he allowed J. N. Limousine's motor vehicle insurance to lapse because he could no longer afford the premiums. Tr. 42, 45, 46, 54; I&E Exhibit 2.

Based upon the above facts and Mr. Herbert's admission, the evidence establishes that I&E met its burden of proof that J. N. Limousine violated the Section 512 of Code, 66 Pa.C.S. § 512, and the Commission's regulation at 52 Pa.Code § 32.11(a), by failing to maintain evidence of motor vehicle insurance on file with the Commission.

Therefore, in the ordering paragraphs below, I&E's Complaint will be sustained.

Civil Penalties Unwarranted

A violation of a Commission statute raises the question as to whether a civil penalty should be imposed pursuant to Section 3301 of the Code. 66 Pa.C.S. § 3301. Section 3301(b) allows the Commission to impose a civil penalty of up to \$1,000 per day per violation. The Commission has promulgated a Policy Statement at 52 Pa.Code § 69.1201 that sets forth ten factors to be considered in determining whether to impose a civil penalty in a litigated proceeding involving violations of the Code and Commission regulations. Based on my consideration of those factors and as discussed below, I find that a penalty is not warranted in this case. Accordingly, I will exercise my discretion not to impose civil penalties for Respondent's violation of Section 512 of the Code and Section 32.11(a) of the Commission's regulations.⁶

⁶ Based upon individual circumstances, there are numerous cases in which the Commission found a statutory or regulatory violation and in the exercise of its discretion decided not to impose a penalty or approved reduction of the requested penalty. *For illustrative cases see, Corinna Lynn Scheffer v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2010-2153353 (Opinion and Order entered November 1, 2011) (penalty eliminated); *Beth Trivelpiece v. PECO Energy Co.*, Docket No. C-2015-2462644 (Opinion and Order entered September 22, 2016) (penalty eliminated); *Pa. Pub. Util. Comm'n v. Limousine Services Transportation, Inc.* Docket Nos. C-2011-2219826, and

Initially, I note Mr. Herbert never disputed that J. N. Limousine allowed insurance coverage lapse as of July 20, 2019. Tr. 54. However, he credibly testified that the sole vehicle used to provide limousine service was a total loss resulting from an accident on February 1, 2019, and he has not driven a vehicle since that day. Tr. 38, 42, 45, 47. Although the limousine was totaled on February 1, 2019, Mr. Herbert continued insurance coverage until June 20, 2019, to maintain his Certificate and in hopes of securing another limousine. However, by June 20, 2019, Mr. Herbert was no longer financially able to maintain insurance coverage, and he had been unable to secure another limousine. While Mr. Herbert should have notified the Commission he no longer had a vehicle to provide limousine service, his lack of a vehicle from February 1, 2019 to the date of the hearing, effectively constituted abandonment of the limousine service. Tr. 69. Next, I will address factors to be considered when imposing a civil penalty.

In *Rosi v. Bell Atlantic-Pa., Inc.*, Docket No. C-00992409 (Order entered February 10, 2000) (*Rosi*), the Commission adopted certain standards that must be applied when imposing a civil penalty. The Commission determined that the *Rosi* factors are generic in nature and are applicable in determining the amount of a civil penalty for all violations of a Commission statute, regulation or order. See *Pa. Pub. Util. Comm'n v. NCIC Operator Services*, M-00001440 (Order entered December 21, 2000). Therefore, the *Rosi* standards are applicable in this proceeding.

The factors and standards first articulated by the Commission in *Rosi* are published as Policy Statements and Guidelines. See 52 Pa.Code § 69.1201. Section 69.1201 applies to both litigated and settled cases involving the calculation of civil penalties. Section 69.201 in part, provides as follows:

A-00110190 (Opinion and Order dated February 14, 2013) (no penalty imposed); *Pa. Pub. Util. Comm'n v. Peter Molnar, t/a Molnar Limousine Service*, Docket No. C-2010-2190069 (Opinion and Order dated July 5, 2011) (penalty reduced to \$50.00); *Pa. Pub. Util. Comm'n, v. Ladybug Transportation & Construction, Inc.*, Docket No. C-2011-2248322 (Opinion and Order dated January 12, 2012) (penalty reduced to \$100.00). Also see, *Pa. Pub. Util. Comm'n v. King*, Docket No. C-2012-2324886 (Order entered May 23, 2013) (*King*). In *King*, the motor carrier had notified the Commission it had gone out of business but failed to file the appropriate abandonment forms. Under these circumstances, the Commission waived imposition of the requested \$600 penalty as unduly harsh.

(a) The Commission will consider specific factors and standards in evaluating litigated and settled cases involving violations of 66 Pa.C.S. (relating to Public Utility Code) and this title. These factors and standards will be utilized by the Commission in determining if a fine for violating a Commission order, regulation or statute is appropriate, as well as if a proposed settlement for a violation is reasonable and approval of the settlement agreement is in the public interest.

(b) Many of the same factors and standards may be considered in the evaluation of both litigated and settled cases. When applied in settled cases, these factors and standards will not be applied in as strict a fashion as in a litigated proceeding. . . .

(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.

In the instant case, the evidence demonstrates Respondent failed to maintain evidence of insurance as required by Section 512 of Code, 66 Pa.C.S. § 512. Considering the above evidence of J. N. Limousine's violation, the following determinations are warranted under the *Rosi* factors and standards:

(1) Uninsured vehicles of any kind pose a serious threat to the welfare of the public. However, J. N.'s failure to maintain insurance does not warrant a finding of willful violation because J. N. Limousine abandoned operations effective February 1, 2019. 52 Pa.Code § 69.1201(c)(1).

(2) The record does not establish the occurrence of consequences of a serious nature, such as uncompensated personal injury or property damage. 52 Pa.Code § 69.1201(c)(2).

(3) This was a litigated case; however, J. N. Limousine's conduct in failing to maintain insurance is deemed negligent in failing to inform the Commission he did not have vehicle upon which insurance could be maintained, and the limousine service had ceased operations, that is, effectively been abandoned. 52 Pa.Code § 69.1201(c)(3).

(4) The record is silent on whether J. N. Limousine made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. 52 Pa. Code § 69.1201(c)(4).

(5) There is no evidence that any customers of J. N. Limousine were adversely affected; and the duration of J. N. Limousine's violation of Section 512 of the Code was limited because technical operation of the limousine service had ceased as of February 1, 2019. 52 Pa.Code § 69.1201(c)(5).

(6) There is no evidence that J. N. Limousine acted in bad faith or attempted to conceal the violation. To the contrary, J. N. Limousine in its answer to the Complaint admitted it had allowed its insurance coverage to lapse. 52 Pa.Code § 69.1201(c)(6).

(7) There is insufficient evidence to rule on J. N. Limousine's level of cooperation with the Commission's investigation or to find that J. N. Limousine acted in bad faith. 52 Pa.Code § 69.1201(c)(7).

(8) Deterring future violations by J. N. Limousine is unnecessary because J. N. Limousine has abandoned its operations of its limousine service. 52 Pa.Code § 69.1201(c)(8).

(9) As noted in Footnote 4, above, based on the circumstances, the Commission has eliminated the penalty or approved reduction of a requested penalty. 52 Pa.Code § 69.1201(c)(9).

(10) Considering the above factors and the entire record, a penalty is not warranted. 52 Pa.Code § 69.1201(c)(10).

Therefore, in the ordering paragraphs below, I&E's request to impose a civil penalty upon J. N. Limousine Service will be denied.

Cancellation of Certificate

I&E's witness, Ms. Roth, claimed J.N. Limousine's Certificate had been cancelled by *Secretarial Letter* dated September 18, 2019. Tr. 29, 58, 5. Ms. Roth's claim is inaccurate. Upon J. N. Limousine's request for reconsideration, the Commission, in its Opinion and Order dated November 14, 2019, specifically ordered as follows:

2. That the September 18, 2019 Secretarial Letter issued in the matter of the Commission's Bureau of Investigation and Enforcement against Herbert L. Joseph, II, t/a J. N. Limousine on July 5, 2019, at Docket No. C-2019-3011258, is rescinded.

Opinion and Order at 5. Recission of the *Secretarial Letter*, thereby resulted in the voiding of the cancellation of Limousine's Certificate and reinstatement of the Commission's June 17, 2019 Suspension Notice , effective June 20, 2019, for J. N. Limousine's failure to maintain evidence of insurance on file with the Commission. Tr. 28; I&E Exhibit 3.

In his closing argument, Mr. Herbert requested that he be given additional time to secure a limousine, financing and appropriate insurance and thereby avoid cancellation of the Certificate. Here, the evidence established that J. N. Limousine has not provided limousine service since February 1, 2019. While I&E did not raise J. N. Limousine's cessation of service as an issue in its Complaint, I am compelled to address the issue because Mr. Herbert has requested more time to revive or reestablish the limousine service. Tr. 54, 69.

As I&E's witness, Ms. Roth, explained, certificated motor carriers are required to maintain continuous service. J. N. Limousine's lack of a vehicle to provide limousine services constitutes an abandonment of the services. Tr. 63.

Under Section 29.62 of the regulations, 52 Pa.Code § 29.62, certificated motor carriers are required to notify the Commission of any interruption in service lasting more than 48 hours and include the cause of the interruption and the probable duration of the interruption. If the carrier fails to notify the Commission that service has been interrupted for 5 consecutive days, that failure to notify, under the regulation will be deem sufficient cause for revocation or cancellation of the carrier's operating authority.⁷ *Id.*

Mr. Herbert claims he did not know he had to notify the Commission about the interruption in the operation of the limousine service. Tr. 51-52. Mr. Herbert argues he continued to pay his insurance even though the Cadillac had been totaled because he was doing everything to maintain his Certificate. *Id.* Notwithstanding Mr. Herbert's argument, without a vehicle to provide limousine service, J. N. Limousine has effectively abandoned operations, thereby warranting cancellation of a carrier's certificate. Tr. 60. Thus, granting Mr. Herbert

⁷ An order of revocation will not issue until the carrier is given opportunity for a public hearing on a complaint as to why the rights should not be revoked and cancelled.

more time to revive the limousine service would be a futile exercise. However, once Mr. Herbert's health improves and he is able to demonstrate financial fitness, he can file an application for a new certificate. Tr. 61.

As discussed above, Mr. Herbert admitted that he has not maintained insurance on file with the Commission since June 20, 2019. Accordingly, a ruling is required that J. N. Limousine violated Section 512 of the Code, thereby warranting cancellation of J. N. Limousine's Certificate at Docket No. A-00114384.

Therefore, in the ordering paragraphs below, J. N. Limousine's Certificate will be cancelled.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. §§ 512, 701.
2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. Certificated motor carriers must have evidence of insurance on file with the Commission at all relevant times. 66 Pa.C.S. § 512.
4. Complainant carried its burden of proof in establishing that Respondent, by failing to have proof of insurance on file with the Commission, violated the Public Utility Code. 66 Pa.C.S. § 512.
5. The Commission is authorized to consider and impose civil monetary penalties against a public utility, person or corporation that violates the Pennsylvania Public Utility Code. 66 Pa.C.S. § 3301.

6. The imposition of a civil penalty against Respondent under the circumstances of this case is not appropriate under the Commission's Policy Statements and Guidelines. 52 Pa.Code § 69.1201.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement, against Herbert L. Joseph, II t/a J. N. Limousine at Docket No. C-2019-3011258 is hereby sustained for violation of the Public Utility Code, 66 Pa.C.S. § 512.

2. That the Certificate of Public Convenience of Herbert L. Joseph, II t/a J. N. Limousine issued at Docket No. A-00114384 is hereby cancelled.

3. That the request of the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement for the imposition of a civil penalty against Herbert L. Joseph, II t/a J. N. Limousine is hereby denied.

Date: August 18, 2020

/s/
Conrad A. Johnson
Administrative Law Judge