

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
BUREAU OF INVESTIGATION AND
ENFORCEMENT**

V.

**DOCKET NO. C-2018-
3000163**

BLACK TIE LIMOUSINE SERVICE

**RESPONDENT BLACK TIE LIMOUSINE SERVICES FILES THE FOLLOWING
EXCEPTIONS TO FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED DECISION DATED AUGUST 20, 2020.**

INTRODUCTION

1. The Administrative Law Judge conducted a Hearing on May 20, 2020 based upon a complaint filed by BIE seeking to revoke Respondent's Certificate and to impose a penalty of \$ 500.
2. Despite having filed an answer to the complaint, the Respondent failed to appear at the Hearing, which had previously been postponed at the request of BIE several times. The ALJ found that Notice had been sent but failed to specify the manner of mailing. ALJ Buckley concluded that Notice must have been delivered because of the lack of any response of non- delivery. However, there was no evidence the Notice was sent by other than regular first-class mail as opposed to certified mail.
3. More crucial, however, is the fact that during this time period, Executive Orders to Stay at Home were in effect in both Pennsylvania and New Jersey by the Governors of those jurisdictions because of the Pandemic. Since Respondent had filed an Answer and otherwise participated in the proceedings, the possibility of lack of receipt of the Notice was completely ignored. Thus, Respondent was unable to present its arguments and defense.
4. The Respondent's Answer and the Exhibit attached showed that since January 31, 2018 it had been in Voluntary Suspension with the PPA, its co

regulating authority. The letter granting the request was attached to the Answer. Since it was not operating, it had cancelled its Certificate of Insurance.

5. In addition, the Respondent sent a payment in February 2020 in the amount of \$ 250 to the BIE in a compromise settlement of the penalty of \$500. The BIE accepted this compromise payment. The Decision fails to mention or credit Respondent for this payment even though it is part of the Docket entries.

EXCEPTIONS

1. EXCEPTIONS TO FINDINGS OF FACT 6 at P. 5

6. Despite having filed an answer to the complaint, the Respondent failed to appear at the Hearing, which had previously been postponed at the request of BIE several times. The ALJ found that Notice had been sent but failed to specify the manner of mailing. The ALJ did not state if the Notice was sent by certified mail which would have required a documented receipt. Instead, ALJ Buckley concluded that Notice must have been delivered because of the lack of any response of non- delivery. This assumption is questionable in light of the period it is alleged to have been mailed. In addition, the Docket shows 2 previous efforts to send mail to the Respondent by Certified Mail had failed. These related to efforts to return Respondent's fine payment of \$ 250.00.
7. The timing of the alleged Notice of Hearing was at a time in the height of the Covid 19 Pandemic where most businesses were closed by Executive Orders of the Governors of Pennsylvania and New Jersey. The fact the Respondent was known to have obtained Voluntary Suspension since January 2018 and it was not operating only supports the likelihood that even if a mailing was sent, no one received notice at Respondent's office. The Respondent had previously filed an Answer and sent a payment in compromise of the proposed penalty. The assumption of Notice was improper because of all the above.

2. EXCEPTIONS TO FINDINGS OF FACT 8 P. 5

8. Finding of Fact 8 states:” 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.”

As stated above regarding Exception 1, there was no evidence presented of the mailing, if it was first class mail, and why, under the unusual circumstances of the Virus pandemic, some other method was not used to ensure delivery. See Discussion in Exception 1 to be included in this Exception.

3. EXCEPTIONS TO FINDINGS OF FACT 9 P. 6.

9. The Finding of Fact 9 states: “The hearing Notice and prehearing Order sent to Black Tie were not returned to the Commission as undeliverable”.

10. As stated in above Exceptions, there was not sufficient evidence under the unusual circumstances of the Pandemic and Stay at Home Orders that regular mail was either being delivered or, if so, there were businesses occupied to receive same. This possibility is even more likely since the Respondent had been in Voluntary Suspension for more than 2 years. The existence of such Suspension was not a secret; it was documented in Respondent’s Answer and was an exhibit identified by BIE to be admitted at the Hearing. Arguments in above Exceptions of Fact apply here as well. Since two prior efforts to mail Respondent had been returned, the Finding above was incorrect.

4. EXCEPTIONS TO CONCLUSION OF LAW 3. P.11

11. Respondent objects to Conclusion of Law 3 cited on page 11 of the Decision. The cited section of the Code does not apply to Respondent since it prohibits a carrier from engaging in intrastate commerce if it does not have on file insurance. However, since it is not disputed that Black Tie had been approved for Voluntary Suspension by the PPA pursuant to its Regulations, there would be no reason to require continuing insurance with the PUC, especially since the limits of insurance required by the PPA far exceeded those of the PUC. This is expressed in Respondent’s Answer. In addition, there was no evidence indicating that Black Tie was, in fact, engaged in commerce after it surrendered the license to the PPA. If a carrier is not engaged in commerce, had temporarily ceased operating, and suspended

operations there is no requirement to retain insurance since the public is not exposed to any risk. To require otherwise would cause needless expenditure.

5. EXCEPTIONS TO CONCLUSIONS OF LAW 6, Page 11.

12. Black Tie files Exception to Conclusion of Law 6 on page 11 of the Decision which states “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).” Black Tie’s argument regarding Conclusion of Law 3 above applies here. If the Respondent was not engaging in intrastate commerce, exposing the riding public to any risk and if the PPA did not require insurance to be retained while in Voluntary Suspension, the PUC’s regulation should not apply. The PUC presented no evidence that Respondent engaged in intrastate commerce after it was placed in Voluntary Suspension. Thus, the insurance was not required.

6. EXCEPTIONS TO ORDER 1 P. 12

13. Respondent Excepts to paragraph 1 of the Order which sustained the Complaint filed by BIE. Because the failure to have insurance should not apply in this case as discussed above, the Complaint should not have been sustained since Respondent was not operating. Also, because there was insufficient evidence to conclude Respondent was aware of the Hearing and failed to appear the Exception to the Order is proper. As described below, the Complaint should not have been sustained because the penalty was not proper and was excessive. The Complaint requests a penalty of \$ 500 and cancellation of the Certificate. As explained in Exception 8 to paragraph 3 of the Order, the Respondent had previously paid the sum of \$ 250.00 as a compromise penalty with the BIE. Despite the payment, the Order sustains the Complaint which seeks \$ 500. No credit is given to the prior payment. Therefore, the Order is not proper. As discussed below, the penalty is improper for other reasons.

7. EXCEPTIONS TO ORDER 2 P. 12.

14. The Respondent objects to revocation of the certificate for all the reasons described in the Exceptions above. The sanction is too punitive since there was no evidence Respondent operated without insurance. The public was not exposed. Respondent paid a compromise penalty which was ignored by the ALJ and the BIE. The Respondent had not operated since January 31, 2018

because it obtained permission to be placed in Voluntary Suspension. There was no harm to the public, realistically or potentially. Revocation under the circumstances is improper and too punitive, especially since the Pandemic created such uncertainty that Respondent had obtained Notice via First Class Mail.

8. EXCEPTIONS TO ORDER 3. P. 12.

15. The Order required Respondent to pay a civil penalty of \$ 500.00 within 30 days. As stated above, the Respondent had previously paid \$250.00 in what had been a negotiated compromise amount. The docket shows the Respondent sent a personal check for \$ 250 which the Commission returned because it was not certified. The mailing of the returned check was not delivered even though it was sent to the alleged address of Respondent. Ultimately, in February 2020 payment of the fine was completed and accepted by the Commission. However, this payment was ignored by the ALJ. The Decision does not say a penalty of an “additional” \$ 500 was warranted. It only stated to be a penalty of a total of \$ 500.00. Therefore, the Order to pay the penalty of \$500 is not correct.
16. The factors considered at pages 8-10 of the Decision do not support the penalty.
 - a. There was no risk of injury to the public since Respondent was not operating and requested from the PPA Voluntary Suspension;
 - b. No harm was foreseeable because there was no operation and had been none for two years;
 - c. The insurance was cancelled at Respondent’s request so conduct was not they type of intentional act contemplated as a relevant factor;
 - d. No evidence any customer was affected;
 - e. Respondent had no prior violations;
 - f. Cooperation in this case is not relevant;
 - g. Deterrence not relevant. There is no potential harm because not operating.
 - h. Imposing the excessive penalty to punish Respondent for wasting the Commission time would impose a financial penalty for exercising a right to a Hearing. By that argument, any party should have a penalty imposed if it seeks to have a court hear its case. In this case, Respondent had agreed to pay a reduced penalty of \$ 250.00 as stated above. Ultimately, after delays because of the lack of serving the

return personal check, Respondent paid the reduced amount. The Docket shows the Commission accepted the reduced penalty before the Hearing.

Respectfully Submitted,

Joey Gabbay

Joseph Gabbay
Black Tie Limousine Services

Black Tie Limo

102 Browning Lane
Cherry Hill NJ 08003

Date: August 30, 2020

CERTIFICATE OF SERVICE

I, Joseph Gabbay, hereby certify that pursuant to the Commission's Emergency Order at Docket Number M-2020-3019262 under the pandemic emergency, and since the Commission has no access to mail delivery, Exceptions were efiled with the Secretary of the Commission by opening an efile account through the Commission's website and accepting eservice at <http://www.puc.state.pa.us/efiling/default.aspx>.

In addition a copy of the foregoing exceptions was emailed to the following:

Matthew C. Fallings | Prosecutor
PA Public Utility Commission | Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street | Harrisburg PA 17120
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