



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION



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DOCKET NUMBER 1002-C-05-L-R
(Complaint Number LV11-2309-34)

RE: IN THE MATTER OF THE CITATION OF
METROPOLITAN LIVERY, INC. D/B/A
METROPOLITAN LIVERY.

Final Decision Upon Reconsideration

August 25, 2010

I. INTRODUCTION

A. Background

By citation dated February 25, 2010, by the Department of Transportation (hereinafter "department"), pursuant to Connecticut General Statutes Section 13b-103, as amended, Metropolitan Livery, Inc. d/b/a Metropolitan Livery (hereinafter "respondent"), holder of Livery Permit Number 736 was ordered to come before the department to answer allegations made therein.

Pursuant to said citation, the respondent was directed to appear at the Newington office of the Department of Transportation to show cause why Permit Number 736 for the operation of livery service should not be suspended or revoked or a civil penalty imposed for violation of its permit, issued pursuant to Connecticut General Statutes Section 13b-102, et seq. for failure to adhere to the regulations.

More specifically, on November 23, 2009, the respondent is alleged to have violated Regulations of Connecticut State Agencies Section 16-325-1(1), (2) and (3) by failing to maintain an active headquarters; Section 16-325-3 by failing to notify the department in writing within forty-eight hours of any change of business address and Section 16-325-4 by changing location of its headquarters to a point outside of the city or town specified in its permit without prior approval by the department.

The citation was served upon the respondent by first class and certified mail and recited the department's reasons for issuing same.

B. Hearing

Pursuant to Section 13b-103 of the Connecticut General Statutes, as amended, the public hearing for this citation was held on March 30, 2010.

Notice of the citation and of the hearing to be held thereon was given to the respondent and to such other parties as required by General Statutes Section 13b-103, as amended.

The hearing on this matter was conducted by a hearing officer designated by the Commissioner of Transportation, pursuant to Section 13b-17 of the General Statutes.

C. Appearances

The respondent appeared through William Scalzi, its owner, and was represented by Donn A. Swift, Esq. of Lynch, Traub, Keefe and Errante, whose mailing address is 52 Trumbull Street, New Haven, Connecticut.

Robert Colucci, supervising special investigator with the Regulatory and Compliance Unit of the Department of Transportation presented the department's evidence.

D. Administrative Notice

Administrative notice was taken of two documents in the permanent permit file of Metropolitan Livery, Inc. The documents are entitled "Permit/Certificate Holder Information" dated 1999 and 1997.

II. FINDINGS OF FACT

1. The respondent is holder of Livery Permit Number 736 and is authorized to operate livery service from a headquarters in Meriden, Connecticut.

2. On November 23, 2009 at approximately 11:20 a.m., Robert Colucci, supervising special investigator for the Regulatory and Compliance Unit of the department visited the respondent's headquarters address of record at 877 North Colony Road in Meriden Connecticut to conduct a headquarters inspection.

3. During his investigation, Colucci learned from an employee of the landscaping company inhabiting the subject location, that Metropolitan Livery, Inc. was not located at the subject address.

4. The employee of the landscaping company knew nothing of Metropolitan Livery, Inc.'s business.

5. Colucci saw no visible indication of Metropolitan Livery, Inc.'s presence at the subject address.

6. Colucci sent a warning letter dated December 2, 2009 to Metropolitan Livery, Inc., at its mailing address of record, advising Metropolitan Livery, Inc. that it did not meet the requirements for a livery headquarters in Meriden and advising Metropolitan Livery, Inc. of the steps it had to take to come into compliance.

7. Colucci afforded Metropolitan Livery, Inc. 30 days from the date of the warning letter in which contact the Regulatory and Compliance Unit for re-inspection for compliance confirmation.

8. Metropolitan Livery, Inc.'s owner and representative, William Scalzi called Colucci within two weeks of receiving the warning letter.

9. Metropolitan Livery, Inc. did not contact Colucci for re-inspection within the 30 days allotted.

10. Scalzi called Colucci shortly after Scalzi received Colucci's letter, and Colucci understood that Scalzi would address the problem of not finding anyone at the purported headquarters.

11. The next contact between Colucci and Scalzi was the March 22, 2009 letter from Scalzi to Colucci wherein Scalzi's wrote: *"With regard to your letter of December 2, 2009 and the concerns you raised therein, I would first like to apologize for not responding."*

12. The respondent's records maintained in its permanent authority file includes two documents, admittedly executed by Scalzi, listing the respondent's office as having hours of 8:00 a.m. to 4:30 p.m. and a telephone number of 203-932-9935 and dated 1997 and 1999.

III. DISCUSSION

The Department of Transportation has jurisdiction over matters pertaining to the operation of motor vehicles in livery service in the State of Connecticut accordance with Connecticut General Statutes Section 13b-102, as amended.

Pursuant to Connecticut General Statutes Section 13b-103 the department may amend, or for sufficient cause suspend or revoke any such permit. Further, the department may impose a civil penalty on any person who violates any provision of the governing chapter or any regulation adopted under Section 13b-102 through 13b-109, as amended, with respect to fares, service, operation or equipment, in an amount not to exceed one thousand dollars per day for each violation.

The evidence in this matter shows that the respondent is holder of Permit Number 736 and is authorized to operate vehicles in livery service within the State of Connecticut from a headquarters in Meriden. The respondent is alleged to have failed to maintain its headquarters in Meriden at the address of record for the headquarters. The Regulatory and Compliance investigator conducted a headquarters check and based on the information of record, found that the respondent did not have someone in attendance at its headquarters office. Further, the investigator found that there was no sign of the company operating from that headquarters. The investigator spoke to someone at the address who stated that the company was no longer operating from that address.

The respondent's arguments in defense of the allegations made by the Regulatory and Compliance investigator are unpersuasive. First, William Scalzi, owner of the company, has been in the transportation business for 23 years. He is undoubtedly aware that permit/certificate holders in the State of Connecticut are required to keep and maintain their permanent records with the department current. As enumerated in Regulations of Connecticut State Agencies Section 16-325-3, any change of address,

telephone number or other pertinent information is to be updated with the department by the certificate holder's representatives or management.

With regard to the change in address and company information, a review of the documents in the department's permanent certificate file revealed two documents containing Certificate Holder Information and executed by someone on behalf of the company. Those forms list hours of operation as 8:00 A to 4:30 P, Monday through Friday, 365 days of the year. In retrospect, Scalzi offers that he had filed the documents and had he filed the documents so that he would comply with the regulations, he would have completed the form differently.

Scalzi argues that because the records that resided in the permanent file, of which administrative notice was taken, contradict his testimony then they do not relate to the issues at hand. That argument simply does not make sense and is not persuasive. This hearing officer does not agree. The documents are relevant and probative as to how the respondent was operating in comparison to how it is currently operating, or rather how it was operating until the filing of the citation.

Scalzi argued, essentially, that people do not walk into the office because the service is for the most part medical livery. Regardless, however, of whether the business is oriented for general livery service or special livery service of some sort, with some limitation, a livery company is expected to have a headquarters established in accordance with the regulation.

Scalzi further argued that had Colucci made his inspection at 2:00 p.m. he would have found a Metropolitan Livery employee on the premises. The evidence does not support Scalzi's argument – especially as there was no indication that Metropolitan Livery was on the premises (no name or office hours on the door at the time of inspection) and further, an employee of the tenant of the building stated that the livery company was no longer there. Given the attending circumstances, it is difficult to believe that there was a Metropolitan Livery employee on the premises from 2 p.m. to 6 p.m. There may be an employee on the premises currently, to the respondent's credit.

IV. CONCLUSIONS OF LAW

There is substantial evidence on the record to support the conclusion that the respondent violated Regulations of Connecticut State Agencies by failing to maintain an active headquarters as enumerated in Regulations of Connecticut State Agencies Sections 16-325-1. The record is silent on the allegations that the respondent actually moved its headquarters and that the respondent failed to notify the department of its move; therefore said allegations are dismissed.

The respondent will be assessed a civil penalty for violation of Regulations of Connecticut State Agencies Section 16-325-1 in the amount of \$50 per day for the number of days that the respondent failed to contact Colucci's warning letter. The civil

penalty is assessed from the date of January 2, 2010 (the expiration of the 30 days that the respondent was afforded to contact Robert Colucci) to March 22, 2010, the date of the letter that the respondent sent to Colucci, for a total of 80 days.

V. ORDER

The respondent is hereby ordered to pay to the Department of Transportation a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4000), by certified check, bank check or money order made payable to "Treasurer, State of Connecticut," within forty-five (45) days from the date of the final decision.

The respondent is further ordered to notify the department of a date and time, within three months from the date of this final decision, when a member of the Regulatory and Compliance Unit may visit the headquarters and inspect the respondent's records.

Failure to comply with the orders in this final decision may result in further citations. This final decision constitutes notice in accordance with Connecticut General Statutes Section 4-182(c).

VI. RECONSIDERATION

By Petition for Reconsideration timely filed with the department on April 29, 2010, the respondent requested reconsideration of the Final Decision based upon the following:

- a) An error of fact as well as an error of law, which needs to be corrected;
- b) New evidence is necessary in the form of the investigator for the Department of Transportation re-inspecting the premises involved Meriden so that a proper determination can be made that Metropolitan Livery, Inc. was and is in full compliance with the application regulations, specifically Section 16-325-1;
- c) For good cause. Specifically, evidence was presented that Metropolitan Livery, Inc. has been in full compliance with the applicable regulations both before and after the "warning letter" of Mr. Robert Colucci dated December 2, 2009;
- d) In the "Conclusions of Law" section of the decision, on pages 5 and 6, this hearing officer indicates "There is substantial evidence on the record to support the conclusion that the respondent violated Regulations of Connecticut State Agencies by failing to maintain an active headquarters as enumerated in the Regulations of Connecticut State Agencies Section 16-325-1". This conclusion is based upon the following findings: 1) No name or the office hours on the door at the time of inspection. 2) An employee of the tenant of the building stated the livery company was no longer there. 3) The hearing officer did not believe that there was a representative of Metropolitan Livery, Inc. on the premises from 2:00 to 6:00 p.m.

The respondent's reconsideration request was granted by the undersigned hearing officer on May 6, 2010. At the request of the respondent, Robert Colucci conducted a random inspection of the headquarters for compliance and on July 12, 2010 Colucci submitted his report from the re-inspection. A hearing limited to the issues enumerated in the petition for reconsideration was scheduled and held on August 16, 2010 at the Newington office of the department.

Donn Swift, Esquire appeared on behalf of Metropolitan Livery, Inc., who was represented by William Scalzi, its owner. Robert Colucci, supervising special investigator for the Regulatory and Compliance Unit, appeared on its behalf.

VII. FINDINGS OF FACT AFTER RECONSIDERATION:

1. Robert Colucci conducted a headquarters inspection at the Meriden headquarters of Metropolitan Livery, Inc. on June 16 and June 18, 2010 at 2:45 p.m. 3:15 p.m. respectively.

2. Upon arrival at the headquarters, Colucci found the office locked. He knocked at the door and there was no response. He went to the rear of the building which was also locked and he received no response upon knocking on the back door.

3. Ronald J. Reagan is an employee of the landscaping company from whom the respondent rents office space. Reagan works as an accountant for the landscaper. Reagan was told in 2004 that part of his duties, as an employee of the landscaping company, would include working in the office from 2 p.m. to 6 p.m. Monday through Friday for Metropolitan Livery, Inc.

4. Reagan is 77 years old and has a history of cancer and open heart surgery that requires him to see his six physicians once every three months along with a nutritionist every other week. He was at a nutritionist appointment on June 16, 2010.

5. Reagan is in the office when he does not have other things to attend to, such as driving his landscaper employer to jobs. Reagan was driving his landscaper employer to a job site on June 18, 2010

6. Reagan is not an employee of the respondent.

7. Reagan does not answer the telephone for the respondent.

8. All of the calls received at the Meriden headquarters roll over to the West Haven headquarters.

9. Reagan does not quote prices for livery service from the Meriden headquarters.

10. Reagan does not book trips for the livery service from the Meriden headquarters.

11. Reagan keeps the "rate scale" on file at the headquarters office in Meriden.

12. The respondent maintains a telephone line at the Meriden headquarters, which rolls its calls to the West Haven headquarters or plays a message advising the caller to call the West Haven headquarters.

13. Headquarters for the purposes of livery service in the State of Connecticut is defined in Regulations of Connecticut State Agencies Section 16-325-1 as "an office where (1) the records of the permit holder's business are handled and kept, and (2) the permit holder or his employee is in attendance to dispatch motor vehicles used in livery service, and (3) telephone service is maintained in the name of the permit holder.

14. Records, for the purposes of livery service in the State of Connecticut do not only include rate scales, but they also encompass accounts in sufficient detail to readily furnish to the authority, upon request, reports of their financial condition and the results of their operations such as books, records, vouchers, memoranda and other papers relating to the business of the permit holder. Regulations of Connecticut State Agencies Section 16-325-5.

15. The respondent is not required by the Connecticut General Statutes or the Regulations of Connecticut State Agencies to maintain a sign on its premises.

16. The respondent is permitted and authorized to operate eleven (11) motor vehicles in general livery service from a headquarters in Meriden. See Department of Transportation Decision dated December 4, 2009.

17. Upon his second inspection, Colucci confirmed that the respondent's purported headquarters in Meriden does not comply with the Regulations of Connecticut State Agencies Section 16-325-1.

VIII. CONCLUSIONS OF LAW

Metropolitan Livery, Inc., holder of Livery Permit 736 is authorized to operate motor vehicles in livery service from Meriden, Connecticut. It does not maintain a headquarters within the meaning of Regulations of Connecticut State Agencies Section 16-325-1 in that it does not have an employee on the premises, dedicated to the business during its established office hours. The respondent does not have an employee who can quote rates and book trips from the Meriden office. Moreover, its records, as enumerated in Regulations of Connecticut State Agencies Section 16-325-5, are not kept at the Meriden headquarters office, but rather in West Haven where rates are quoted and trips are booked and presumably trip sheets are kept. Metropolitan Livery, Inc.'s Meriden

headquarters, as currently established and operated, is in violation of Regulations of Connecticut State Agencies Section 16-325-1.

IX. ORDER

The civil penalty originally assessed in the amount of Four Thousand Dollars (\$4000) for failure to maintain a headquarters and failing to follow up to contact the department for 80 days shall remain in effect.

1. Metropolitan Livery, Inc. is hereby ordered to pay to the Department of Transportation a civil penalty in the amount of FOUR THOUSAND DOLLARS (\$4000), by certified check, bank check or money order made payable to "Treasurer, State of Connecticut," within forty-five (45) days from the date of this Final Decision Upon Reconsideration.
2. Metropolitan Livery, Inc. is hereby ordered to establish a headquarters within such that it complies with the requirements of Regulations of Connecticut State Agencies Section 13b-325-1, and to ensure that the proper information is kept at the headquarters so that it may be readily furnished to the Department of Transportation when requested.
3. Metropolitan Livery, Inc. is hereby ordered to file with the department An updated Permit/Certificate Holder Form for the Meriden headquarters.

Failure to comply with the orders in this final decision may result in suspension, revocation or further citations. This final decision constitutes notice in accordance with Connecticut General Statutes Section 4-182(c).

Dated in Newington, Connecticut this 25th day of August 2010.

CONNECTICUT DEPARTMENT OF TRANSPORTATION



Laila A. Mandour
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