



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. HLT 09378-19

AGENCY DKT. NO. 2019-0666V

HUDSON INVALID COACH,

Petitioner,

vs.

NEW JERSEY DEPARTMENT OF HEALTH,

Respondent.

Phillip B Vinick, Esq., for Petitioner

Elizabeth Tingley, Deputy Attorney General, for Respondent (Andrew J. Bruck,
Acting Attorney General of New Jersey, attorney)

Record Closed: December 22, 2021

Decided: February 1, 2022

BEFORE **THOMAS R. BETANCOURT, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner challenges an Order to Cease and Desist, and a penalty of \$202,000.

The matter was transferred to the Office of Administrative Law (OAL), where it was filed on July 12, 2019, as a contested case. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

A prehearing conference was held on August 7, 2019, and a Prehearing Order was entered on August 8, 2019.

Respondent filed a motion for summary decision, dated December 14, 2021. Petitioner filed a response thereto dated December 22, 2021.

FACTUAL DISCUSSION

The parties submitted a Joint Stipulation of Facts, as follows:

1. Hudson Invalid Coach, was licensed as a Basic Life Support and Mobility Assistance Vehicle ("BLS/MAV") provider within the State of New Jersey.

2. Prior to February 28, 2019, Hudson Invalid Coach was owned by Mr. Omni Elsalihee.

3. On or about February 28, 2019, ownership of Hudson Invalid Coach was transferred from Mr. Omni Elsalihee to Mr. Shlomo Furer.

4. Prior to this transfer, Mr. Farer had no ownership interest in Hudson Invalid Coach.

5. As of February 28, 2019, Mr. furor was the sole owner of Hudson Invalid Coach.

6. The Department of Health was not notified of the change in ownership of Hudson Invalid Coach.

7. On or about March 27, 2019, the Department of Health became aware of the change in ownership.

8. From February 28, 2019 through March 30, 2019, Hudson Invalid Coach completed 1,631 transports utilizing multiple BLS/MAV vehicles.

9. From February 28, 2019 through March 30, 2019, Hudson Invalid Coach operated BLS/MAV services on 27 calendar days.

10. From February 28, 2019 through March 30, 2019, Hudson Invalid Coach utilized a varying number of BLS/MAV vehicles per day.

11. The sum total of vehicles utilized per day by Hudson Invalid Coach from February 28, 2019 through March 30, 2019 is 175.

12. On or about April 8, 2019, Mr. farer voluntarily ceased operation of Hudson Invalid Coach.

13. By letter dated May 23, 2019, the Department of Health ordered Hudson Invalid Coach to cease and desist operation.

14. By letter dated May 23, 2019, the Department of Health assessed a monetary penalty of \$202,000 against Hudson Invalid Coach.

FINDINGS OF FACT

1. Ownership of Hudson Invalid Coach was transferred from the prior owner, Omni Elsalihee, to Shlomo Furer on or about February 28, 2019. (Cert. of Counsel, Ex. A)

2. The Department of Health did not receive a notification of the change in ownership or an application for licensure. ((Cert. of Counsel, Ex. C and Ex. D)

3. The Department of Health became aware of the change in ownership on or about March 27, 2019. (Cert. of Counsel, Ex. D and Ex. E)

4. From February 28, 2019 through March 30, 2019, Hudson Invalid Coach provided mobility assistance vehicle or basic life support ambulance services. (Cert. of Counsel, Ex. F and Ex. G)

5. Hudson Invalid Coach operated with a license for twenty-seven calendar days and utilized a sum total of vehicles per day of one hundred seventy five. (Cert. of Counsel, Ex. G and Ex. D)

LEGAL ANALYSIS AND CONCLUSION

Standard for Summary Decision

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. Ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must “consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

The facts in the instant matter are not disputed. The parties have submitted a Joint Stipulation of Facts, as set forth above. Accordingly, the matter is ripe for summary decision.

Basic Life Support and Mobility Assistance Vehicle Regulations

N.J.A.C. 8:40-1 et seq. contains the pertinent regulations for the operation of a non-volunteer mobility assistance vehicle or basic life support ambulance service within the State of New Jersey.

N.J.A.C. 8:40-2.5(g)(2) provides as follows:

g) Any and all proposed changes in ownership interest shall be reported to the Department at least 30 calendar days prior to the actual change, except that providers owned by publicly held corporations need only report stock redistributions of five percent or more.

2. All other changes to the controlling interest of a provider shall constitute a complete change in ownership and shall require the submission of an application for licensure by the proposed owner, as set forth at N.J.A.C. 8:40-2.1 and 2.2. No services shall be provided until such time as the applicant has been granted the required provider and vehicle licenses.

It is undisputed that ownership in Hudson Invalid Coach changed from Omni Elsalihee to Shlomo Furer on or about February 28, 2019. It is also undisputed that there was no notice to the Department of Health of the proposed change in ownership within the requisite thirty days prior to said change.

Any new owner is required to submit an licensure application prior to providing services. It is undisputed that Hudson Invalid Coach did in fact provide services after the change in ownership, but prior to receiving the requisite license.

N.J.A.C. 8:40-2.5(g)(3) states: All licenses shall be immediately void if the controlling interest of a provider is changed without first notifying the Department and receiving all necessary provider and/or vehicle licenses.

Accordingly, Hudson Invalid Coach was unlicensed once the change in ownership took place. Between the period of February 28, 2019 and March 30, 2019, Hudson Invalid Coach operated without a license for twenty-seven calendar days. It utilized a sum total of one hundred seventy-five vehicles per day in this time frame.

N.J.A.C. 8:40-7.4(a)(2)(ii) provides that in addition to the issuance of an order to cease and desist, the Commissioner or his or her designee may: Impose a monetary penalty in the amount of \$ 1,000 per calendar day for each day that a service is found to

have operated without a license. In addition, the Department may impose a penalty in the amount of \$ 1,000 per calendar day/per vehicle for each day that each unlicensed vehicle is utilized.

The regulatory framework authorized the Commissioner to assess the penalty that was assessed in the instant matter in the amount of \$202,000.

Petitioner argues that the assessment of said penalty was in disregard of fairness. Petitioner further argues that Mr. Furer was naïve and young. He relied on the prior owner for advice. That he did not intentionally operate without a license. That he voluntarily ceased operation prior to the issuance of the Cease and Desist Order.

Further, Petitioner submits four letters from the Department of Health, Office of Emergency Services (Pet. Brief, Ex. A) to other providers. Said letters all address Cease and Desist Orders and are Final Agency Actions. Only one of said letters imposes a monetary penalty. Petitioner submits the same to buttress the argument that the imposition of a penalty is discretionary. It certainly is discretionary in accordance with N.J.A.C. 8:40-7.4(a)(2)(ii) as the word “may” as opposed to “shall” is used.

However, Petitioner submits nothing, other than the four letters to support the implication that the Commissioner abused her discretion.

Being naïve and young, and relying on the seller of Hudson Invalid Coach for advice is not a basis for reducing the properly imposed penalty.

Based upon the above I **CONCLUDE** that the Cease and Desist Order dated May 23, 2019, and the imposition of a penalty of \$202,000, be **AFFIRMED**.

ORDER

It is hereby **ORDERED** that respondent's motion for summary decision is **GRANTED**; and

It is further **ORDERED** that Cease and Desist Order dated May 23, 2019, and the imposition of a penalty of \$202,000, be **AFFIRMED**.

I hereby **FILE** my initial decision with the **COMMISSIONER OF THE DEPARTMENT OF HEALTH** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF HEALTH**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Health does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF HEALTH, John Fitch Plaza, PO Box 360, Room 805, Trenton, New Jersey 08625-0360**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 1, 2022 _____

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

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APPENDIX

List of Moving Papers

For Petitioner:

Brief in opposition to motion for summary decision with Exhibit A

For Respondent:

Motion for summary decision

Brief in support of motion for summary decision

Certification of Counsel (Elizabeth Tingley, DAG) with Exhibits A through G

Certification of Service

Other Filings:

Joint Stipulation of Facts