**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Application of Kingman Luxury Transport :

Corporation for approval to use luxury :

vehicles to transport passengers on an advanced : A-2015-2471416

reservation basis within a 150 mile radius of :

Allentown, PA :

**INITIAL DECISION**

Before

Eranda Vero

Administrative Law Judge

This decision denies the application of Kingman Luxury Transport Corporation because the Applicant failed to appear at the scheduled hearing and prosecute its Application.

HISTORY OF THE PROCEEDING

On January 29, 2015, Kingman Luxury Transport Corporation (Applicant) filed an application with the Pennsylvania Public Utility Commission (Commission) requesting approval to use luxury vehicles to transport passengers on an advanced reservation basis within a 150 mile radius of Allentown, PA (Application). Notice of the Application was published in the April 11, 2015 *Pennsylvania Bulletin* at 45 Pa.B. 1917. Protests to the Application were due on or before April 27, 2015.

On April 22, 2015, J & J Leasing & Rentals, Inc. filed a timely protest (Protest) to the Application generally alleging that the Application would duplicate already existing service to the detriment of existing carriers. Additionally, the Protest alleged that Applicant is neither technically nor financially fit for providing the service its Application proposes. The Protestant requested that the Commission deny the Application.

By Hearing Notice dated November 20, 2015, the Commission scheduled an initial hearing in this case for January 25, 2016, at 10:00 a.m. and assigned the matter to me.

A Prehearing Order was issued on January 7, 2016, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing. In addition, the Prehearing Order directed that the Applicant have an attorney licensed in Pennsylvania enter an appearance in this proceeding prior to the hearing.

Due to inclement weather the January 25, 2016 hearing was cancelled. By Hearing Cancellation/Reschedule Notice dated January 29, 2016, the parties were informed that the initial hearing was rescheduled for March 16, 2016.

On March 8, 2016, counsel for Protestant, Kenneth A. Olsen, Esq. requested a continuance of the March 16, 2016 hearing due to a conflict in his schedule. Mr. Olsen’s request for a continuance was granted and a Hearing Cancellation/Reschedule Notice informed the parties that the initial hearing in this matter was rescheduled for Tuesday, June 7, 2016, at 10:00 a.m.

To date, there is no entry of appearance by a licensed attorney on behalf of the Applicant in this proceeding.

The hearing convened as scheduled on June 7, 2016. Kenneth A. Olsen, Esq. appeared representing the Protestant. The Applicant did not appear at the hearing. The hearing reconvened at approximately 10:15 a.m. after I confirmed that the Applicant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for the Protestant moved to dismiss the Application with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below. The record in this matter closed upon the conclusion of the evidentiary hearing on June 7, 2016.

FINDINGS OF FACT

1. On January 29, 2015, Kingman Luxury Transport Corporation filed an Application requesting the right to use luxury vehicles to transport passengers on an advanced reservation basis within a 150 mile radius of Allentown, PA.

2. Notice of the Application was published in the April 11, 2015 *Pennsylvania Bulletin* at 45 Pa.B. 1917.

3. Protests to the Application were due on or before April 27, 2015.

4. On April 22, 2015, J & J Leasing & Rentals, Inc. filed a timely Protest to the Application.

5. A Hearing Notice dated November 20, 2015, notified the parties that an initial hearing was scheduled in this matter for January 25, 2016, at 10:00 a.m.

6. A Prehearing Order was issued on January 7, 2016, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

7. The Prehearing Order directed that the Applicant have an attorney licensed in Pennsylvania enter an appearance in this proceeding prior to the hearing.

8. The January 25, 2016 hearing was cancelled due to inclement weather.

9. By Hearing Cancellation/Reschedule Notice dated January 29, 2016, the parties were informed that the initial hearing was rescheduled for March 16, 2016.

10. A second Hearing Cancellation/Reschedule Notice informed the parties that the initial hearing in this matter was rescheduled for Tuesday, June 7, 2016, at 10:00 a.m.

11. None of the documents mailed to Applicant was returned to the Commission by the U.S. post office as undeliverable.

12. No entry of appearance was filed on behalf of the Applicant in this proceeding.

13. Neither Applicant nor any counsel representing Applicant timely appeared at the scheduled initial hearing for June 7, 2016.

14. Applicant did not file a restrictive amendment, request a continuance or withdraw the application.

DISCUSSION

In this Application, the Applicant is seeking the right to use luxury vehicles to transport passengers on an advanced reservation basis within 150 mile radius of Allentown, PA. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Applicant. 66 Pa.C.S. § 332(a).

The issue in this proceeding is determined by whether the Applicant sustained its burden of proof. By failing to participate in the hearing, the Applicant was unable to meet this burden.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm’n.,* 479 A.2d 10 (Pa.Cmwlth. 1984). Notice mailed to a party’s last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice and a Prehearing Order were mailed to the Applicant at the address listed on its Application. Neither document was returned to the Commission as undeliverable by the post office. Therefore, the Applicant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Applicant nor a representative licensed to practice law in this Commonwealth appeared at the hearing. [[1]](#footnote-1) To date, there is no further information about the Applicant regarding this hearing. The Applicant’s failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Applicant waived the opportunity to participate in the hearing by failing to appear. Kingman Luxury Transport Corporation’s Application will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Application of County Yellow Cab, LLC*, Docket No. A-2011-2267963 (Final Order entered August 16, 2012).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. As the Applicant, Kingman Luxury Transport Corporation, had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 332(a).
3. Notice mailed to a party’s last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).
4. By failing to appear and be heard on this Application, Kingman Luxury Transport Corporation waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Application of County Yellow Cab, LLC*, Docket No. A-2011-2267963 (Final Order entered August 16, 2012).

5. Kingman Luxury Transport Corporation has failed to meet its burden of proving that it is entitled to the relief it is seeking from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of J & J Leasing & Rentals, Inc. to dismiss the Application of Kingman Luxury Transport Corporation at Docket No. A-2015-2471416 is granted.

2. That the Application filed by Kingman Luxury Transport Corporation at Docket No. A-2015-2471416 is dismissed with prejudice for failure to prosecute.

3. That the Secretary’s Bureau mark this matter closed.

Date: June 15, 2016 /s/ Eranda Vero

Administrative Law Judge

1. It is noted that the Applicant failed to comply with paragraph 6 of the Prehearing Order issued January 7, 2016, since it did not have a licensed attorney enter an appearance on its behalf prior to the scheduled hearing. Because the Application is denied on other grounds, I shall not address the Applicant's failure to comply with this Prehearing Order. [↑](#footnote-ref-1)