

Decision No. R23-0100

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22G-0433TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

FREDDIE DICKY AND STEVEN KNOT, DOING BUSINESS AS ANYTIME TOWING,
INC., PREDATOR RECOVERY, INC., AND SURE SHOT RECOVERY, INC.

RESPONDENTS.

PROCEEDING NO. 22G-0434TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

FREDDIE DICKY AND STEVEN KNOT DOING BUSINESS AS PREDATOR
RECOVERY, INC., AND SURE SHOT RECOVERY, INC.,

RESPONDENTS.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ALENKA HAN
VACATING HEARING,
APPROVING SETTLEMENT,
AND CLOSING PROCEEDINGS**

Mailed Date: February 10, 2023

TABLE OF CONTENTS

<u>I. STATEMENT</u>	2
A. Summary.....	2
B. Procedural Background	2
C. Joint Motion and Agreement	5
II. FINDINGS AND CONCLUSIONS	9
III. ORDER	12
A. The Commission Orders That:	12

I. STATEMENT**A. Summary**

1. This matter comes before the Public Utilities Commission (Commission), on the parties' Joint Motion for Approval of their Joint Stipulation and Settlement Agreement (Joint Motion). For the reasons set forth below, the Joint Motion will be granted, the proceeding will be closed, and the evidentiary hearing scheduled for Monday, February 13, 2023, will be vacated.

B. Procedural Background

2. On October 12, 2022, the Commission issued Civil Penalty Assessment Notice (CPAN) No. 131546, against Freddie Dickey and Steven Knost, doing business as Anytime Towing, Inc., Predator Recovery, Inc., and Sure Shot Recovery, Inc. (collectively Respondents). The CPAN asserted eleven violations of Commission rules, one violation of § 40-10.1-107(1), C.R.S., and one violation of § 40-10.1-401(1)(a), all of which were allegedly committed by Respondents on June 1, 2022. CPAN No. 131546 assessed a total penalty amount of \$22,080.00.

3. The Commission designated CPAN No. 131546 as Proceeding No. 22G-0433TO.

4. CPAN No. 131546 asserted the following thirteen violations against Respondents:

Count 1: Violation of Rule 6005(c) of the Rules of Practice and Procedure, 4 *Code of Colorado Regulations* (CCR) 723-6, for failure to maintain or update the address and/or telephone number of a storage facility with the Commission;

Count 2: Violation of Rule 6107(a)(II), 4 CCR 723-6, for allowing a driver for the company to perform tows with a suspended driver's license;

Count 3: Violation of Rule 6508(a)(I)(A), 4 CCR 723-6, for missing the physical address of the carrier in the towing contract;

Count 4: Violation of Rule 6508(a)(I)(E), 4 CCR 723-6, for missing the address and phone number of the storage facility in the towing contract;

Count 5: Violation of Rule 6508(a)(I)(G), 4 CCR 723-6, for missing required language about maximum rates in the towing contract;

Count 6: Violation of Rule 6508(a)(I)(H), 4 CCR 723-6, for missing the signature in the towing contract;

Count 7: Violation of Rule 6509(a)(II), 4 CCR 723-6, for missing the carrier's address on the invoice;

Count 8: Violation of Rule 6509(a)(III), 4 CCR 723-6, for missing the storage facility address on the invoice;

Count 9: Violation Rule 6509(a)(IX), 4 CCR 723-6, for missing the name and signature of the driver on the invoice;

Count 10: Violation of Rule 6509(a)(XII), 4 CCR 723-6, for missing the PUC notice language from the invoice;

Count 11: Violation of Rule 6509(d), 4 CCR 723-6, for not providing a copy of the invoice to the owner of the motor vehicle;

Count 12: Violation of § 40-10.1-107(1), C.R.S., for failure to maintain and file evidence of financial responsibility as required by the Commission; and,

Count 13 Violation of § 40-10.1-401(1)(a), C.R.S., for operating as a towing carrier without obtaining a permit.

5. Also, on October 12, 2022, the Commission issued CPAN No. 132415, against the same Respondents. CPAN No. 132415 asserted ten violations of Commission rules allegedly committed by Respondents on July 30, 2022. CPAN No. 132415 assessed a total penalty of \$7,273.75.

6. The Commission designated CPAN No. 132415 as Proceeding No. 22G-0434TO.

7. CPAN No. 132415 asserted violations against Respondents similar to those raised in CPAN No. 131546. CPAN No. 132415 alleged that the Respondents had committed the following ten violations:

Count 1: Violation of Rule 6107(a)(II), 4 CCR 723-6, for allowing a driver for the company to perform tows with a suspended driver's license;

Count 2: Violation of Rule 6507(c), 4 CCR 723-6, for failure to disclose accepted forms of payment;

Count 3: Violation of Rule 6508(a)(I)(A), 4 CCR 723-6, for missing the physical address of the carrier in the towing contract;

Count 4: Violation of Rule 6508(a)(I)(E), 4 CCR 723-6, for missing the address and phone number of the storage facility in the towing contract;

Count 5: Violation of Rule 6508(a)(I)(G), 4 CCR 723-6, for missing required language about maximum rates in the towing contract;

Count 6: Violation of Rule 6509(a)(II), 4 CCR 723-6, for missing the carrier's address on the invoice;

Count 7: Violation of Rule 6509(a)(III), 4 CCR 723-6, for missing the storage facility address on the invoice;

Count 8: Violation Rule 6509(a)(IX), 4 CCR 723-6, for missing the name and signature of the driver on the invoice;

Count 9: Violation of Rule 4 6509(a)(VI), CCR 723- 6, for missing the destination address on the invoice; and,

Count 10: Violation of Rule 6509(a)(XII), 4 CCR 723-6, for missing the PUC notice language from the invoice.

8. Mr. Dickey and Mr. Knost signed copies of CPAN No. 131546 and CPAN No. 132415, acknowledging receipt of both CPANs.

9. Commission Staff entered its appearance and filed its Notices of Intervention as of Right in Proceeding Nos. 22G-0433TO and 22G-0434TO on November 10, 2022.

10. On November 23, 2022, the Commission referred both Proceeding No. 22G-0433TO and Proceeding No. 22G-0434TO to an Administrative Law Judge (ALJ) for disposition.

11. On January 6, 2023, the undersigned ALJ issued Decision No. R23-0007-I, consolidating Proceeding Nos. 22G-0433TO and 22G-0434TO, and scheduling an evidentiary hearing for February 13, 2023.

C. Joint Motion and Agreement

12. On February 8, 2023, Commission Staff filed the above-referenced Joint Motion to Approve Settlement and attached their Joint Stipulation and Settlement Agreement (Settlement Agreement). In the Joint Motion, the parties advise the Commission that they have come to an agreement to resolve the CPANs.

13. The Joint Motion and Settlement Agreement state that Steven Knost is the owner of Anytime Towing, Inc., Predator Recovery, Inc., and Sure Shot Recovery, Inc.¹ Mr. Knost therefore has authority to enter into the Settlement Agreement on behalf of himself and these three companies.

14. Freddie Dickey is a manager of Anytime Towing, Inc. and of Sure Shot Recovery, Inc. In addition, Mr. Dickey is an employee of Predator Recovery, Inc.

15. According to the terms of the Settlement Agreement, Staff and Respondents agree to the following pertaining to Mr. Knost's performance:

- a) Steven Knost doing business as Anytime Towing, Inc., Predator Recovery, Inc., and Sure Shot Recovery, Inc., admits liability for Counts 1 and 3 through 13 of CPAN No. 131546, as well as Counts 2 through 10 of CPAN No. 132415²;
- b) Steven Knost agrees to pay a reduced civil penalty of \$8,000.00 within thirty (30) days of the Commission's approval of the settlement and final

¹ Joint Stipulation and Settlement Agreement ¶ 1.

² *Id.*, ¶ 14(a).

decision in this Proceeding for the admitted violations identified in the CPANs³;

- c) Mr. Knost will issue a refund in the amount of \$385.27 to Jennifer Walthall within thirty (30) days of the Commission's approval of the settlement and final decision in this Proceeding for the violations identified in the CPANs⁴;
- d) Mr. Knost will update all towing contracts and agreements made by him, Respondent companies, or any other companies Mr. Knost owns, manages, or operates in the State of Colorado, copies of which will be provided to Commission Staff within thirty (30) days of this Settlement Agreement for Staff's compliance review. Respondent Knost will perform any corrections of such contracts directed by Staff and present proof of such corrections to Staff within thirty (30) days of Staff's notification.⁵
- e) Respondent Knost, or any other company owned, managed, or operated by Respondent Knost may not permit Freddie Dickey to drive in the course of his work or employment until Freddie Dickey has presented proof to Commission Staff of possessing a valid driver's license in good standing and Staff has verified the validity of the license⁶
- f) Respondent Knost, or any other company owned, managed, or operated by Respondent Knost, will not permit Freddie Dickey to tow any vehicle or facilitate the towing of any vehicle, except where authorization for a tow is provided by § 40-10.1-405(a)(I), which concerns vehicles being repossessed by a creditor with a lien or security interest in a vehicle.⁷
- g) In the year following the approval of the settlement by the Commission, Respondent Knost, or any other company owned, managed, or operated by Respondent Knost, may not violate any rule or statute such that a CPAN is issued for the violation⁸;
- h) Respondent Knost, or any other company owned, managed, or operated by Respondent Knost, will permit random inspections by Staff to ensure compliance⁹; and,

³ *Id.*, ¶ 14(b).

⁴ *Id.*, ¶ 14(c).

⁵ *Id.*, ¶ 14(d).

⁶ *Id.*, ¶ 14(e).

⁷ *Id.*, ¶ 14(f).

⁸ *Id.*, ¶ 14(g).

⁹ *Id.*, ¶ 14(h).

- i) The total CPAN penalty for the violations admitted by Steven Knost will be due within thirty (30) days if Respondent Knost or any other company owner, managed, or operated by Respondent Knost fails to comply with all the terms and conditions of the Settlement Agreement. The total amount due by Respondent Knost will be \$26,823.75.¹⁰

16. According to the terms of the Settlement Agreement, Staff and Respondents agree to the following pertaining to Mr. Dickey's performance:

- a) Freddie Dickey admits to Count 2 of CPAN No. 131546 and to Count 1 of CPAN No. 132415¹¹;
- b) Freddie Dickey agrees to pay a reduced civil penalty of \$500.00 within thirty (30) days of the Commission's approval of the settlement and final decision in this Proceeding for the admitted violations identified in the CPANs¹²;
- c) For one year following the acceptance of the settlement by the Commission, Respondent Dickey will not tow any vehicle or facilitate the towing of any vehicle, except where authorization for a tow is provided by section 40-10.1-405(a)(I), which concerns vehicles being repossessed by a creditor with a lien or security interest in a vehicle¹³;
- d) Before driving a vehicle in the course of his work or employment in the one year following approval of the Settlement by the Commission, Respondent Dickey must present proof to Staff of possessing a valid driver's license in good standing and must receive verification from Staff as to the validity and standing of the license. Staff reserves the right to request Respondent Dickey's driving record from the Department of Motor Vehicles to confirm the validity of his license¹⁴;
- e) In the year following the approval of the settlement by the Commission, Respondent Dickey may not violate any rule or statute that could result in the issuance of a CPAN violation¹⁵; and,
- f) The total CPAN penalty for the violations admitted by Respondent Dickey will be due within thirty (30) days if Respondent Dickey fails to comply

¹⁰ *Id.*, ¶ 14(i).

¹¹ *Id.*, ¶ 15(a).

¹² *Id.*, ¶ 15(b).

¹³ *Id.*, ¶ 15(c).

¹⁴ *Id.*, ¶ 15(d).

¹⁵ *Id.*, ¶ 15(e).

with all the terms and conditions of this Settlement Agreement. The total amount due will be \$2,530.00.¹⁶

17. Staff and Respondents also agree that:

- a) Should this Settlement Agreement be modified or not approved in its entirety by the Administrative Law Judge or the Commission, either Party, at that Party's option, may withdraw from this Settlement Agreement by filing a notice with the Commission in this proceeding within seven days of entry of such order. In this event, this Settlement Agreement shall be void and this matter be reset for hearing.¹⁷

18. In reaching this Settlement Agreement, Commission Staff took into consideration the following mitigating factors:

- a) Respondents initiated settlement discussions in an attempt to resolve the dispute;
- b) As part of the Settlement Agreement, Respondents have agreed to engage in substantial remedial measures to ensure future compliance, as explained in Paragraphs 14(c) through (i) and 15(c) through (e) of the Settlement Agreement;
- c) Respondents have agreed to comply with all Commission statutes and regulations.¹⁸

19. In consideration of Respondents' admission of liability and agreement to the other terms and conditions, Commission Staff agreed to reduce the amount of the total civil penalty from \$29,353.75 to \$8,500.00 — \$8,000.00 to be paid by Steven Knost + \$500.00 to be paid by Freddie Dickey — which Staff concluded serves the public interest. The settled civil penalty amount of \$8,500.00 consists of a \$7,225.00 civil penalty, plus a 15 percent surcharge of \$1,275.00, pursuant to § 24-34-108, C.R.S.

¹⁶ *Id.*, ¶ 15(f).

¹⁷ *Id.*, ¶ 21.

¹⁸ *Id.*, ¶ 13(b).

20. The Settlement Agreement was signed on behalf of Commission Staff by Lloyd E. Swint, Criminal Investigator II, Criminal Investigations Unit Supervisor, and by Respondents Steve Knost, Owner of Anytime Towing, Inc., Predator Recovery, Inc., and Sure Shot Recovery, Inc., and Freddie Dickey, Manager of Anytime Towing, Inc., and Sure Shot Recovery, Inc. Counsel for Commission Staff approved the Settlement Agreement as to form.

21. Finally, in the Joint Motion, the parties request that the Commission issue an order: (a) approving the Joint Stipulation and Settlement Agreement without modification; (b) vacating the February 13, 2023, evidentiary hearing; (c) permitting either Party to withdraw from the Settlement Agreement should the Commission reject or modify the Settlement Agreement by providing written notice of such withdrawal within seven (7) days of such order; and, (d) waiving response time to the Joint Motion.

II. FINDINGS AND CONCLUSIONS

22. The Commission encourages the settlement of contested proceedings. Rule 1408, 4 CCR 723-1.

23. Respondents hold an active towing authority permit, PUC No. T-05303 (Sure Shot Recovery, Inc.). In addition, they have held PUC No. T-04998 (Anytime Towing, Inc.), now inactive, and PUC No. T-04041 (Predator Recovery, Inc.), now revoked.¹⁹

¹⁹ CPAN No. 131546.

24. As a towing carrier in intrastate commerce in the State of Colorado, Respondent is subject to regulation by the Commission²⁰, and Respondent can be assessed civil penalties for violations of the Towing Carrier Rules of the Rules Regulating Transportation by Motor Vehicle.²¹

25. The CPANs were personally served on Respondents and were signed by Mr. Knost and Mr. Dickey, acknowledging receipt of the CPANs.

26. In determining whether the reduced civil penalty in the Settlement Agreement is appropriate, the ALJ took into account the mitigating factors described in Paragraph 13(b) of the Settlement Agreement. Rule 1302(b), 4 CCR 723-1, provides:

(b) The Commission may impose a civil penalty, when provided by law. The Commission will consider any evidence concerning some or all of the following factors:

- (I) the nature, circumstances, and gravity of the violation;
- (II) the degree of the respondent's culpability;
- (III) the respondent's history of prior offenses;
- (IV) the respondent's ability to pay;
- (V) any good faith efforts by the respondent in attempting to achieve compliance and to prevent future similar violations;
- (VI) the effect on the respondent's ability to continue in business;
- (VII) the size of the respondent's business; and
- (VIII) such other factors as equity and fairness may require.

27. The undersigned ALJ finds good cause to grant the Joint Motion and accept the Settlement Agreement. It is found that a civil penalty assessment of \$8,000.00 against Mr. Knost

²⁰ See § 40-10.1-401, C.R.S., and Rule 6500(a), 4 CCR 723-6.

²¹ See §§ 40-7-113, 40-7-116, and 40-10.1-401(3)(b), C.R.S., and Rule 6514, 4 CCR 723-6.

for the violations of Counts 1 and 3 through 13 of CPAN No. 131546, as well as Counts 2 through 10 of CPAN No. 132415, is an adequate penalty and provides sufficient motivation for Mr. Knost and Respondents to avoid similar violations of Commission regulations.

28. Likewise, it is found that a civil penalty assessment of \$500.00 against Mr. Dickey for the violations of Count 2 of CPAN No. 131546 and Count 1 of CPAN No. 132415 is an adequate penalty and provides sufficient motivation for Mr. Dickey and Respondents to avoid similar violations of Commission regulations.

29. The ALJ further finds it in the public interest to conserve valuable resources by adopting and approving the terms of the Settlement Agreement.

30. Therefore, pursuant to the terms of the Settlement Agreement entered into between Commission Staff and Respondents, Respondent Knost will be ordered to pay a civil penalty of \$8,000.00 for the violations of Counts 1 and 3 through 13 of CPAN No. 131546, as well as Counts 2 through 10 of CPAN No. 132415, and Respondent Dickey will be ordered to pay a civil penalty of \$500.00 for the violations of Count 2 of CPAN No. 131546 and Count 1 of CPAN No. 132415.²²

31. Approval of the Settlement Agreement will not have a precedential effect on other Commission matters.²³

32. Because the request is unopposed, response time to the Joint Motion is waived.

33. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

²² 4 CCR 723-6.

²³ See *Colorado Ute Elec. Ass'n, Inc. v. PUC*, 602 P.2d 861, 865 (Colo. 1979); *B & M Serv., Inc. v. PUC*, 429 P.2d 293, 296 (Colo. 1967).

III. ORDER**A. The Commission Orders That:**

1. The evidentiary hearing scheduled for Monday, February 13, 2023, is vacated.
2. Response time to the Joint Motion for Approval of the Stipulation and Settlement Agreement filed on February 8, 2023, (Joint Motion) is waived.
3. The Joint Motion is granted.
4. The Stipulation and Settlement Agreement (Settlement Agreement) is accepted and approved without modification. A copy of the Settlement Agreement, attached hereto as Appendix A, is incorporated herein by reference and is made a part of this Order. The parties shall comply with the terms of the Settlement Agreement.
5. Respondents shall comply with all Colorado statutes, federal statutes and regulations, and the Commission's Rules Regulating Transportation by Motor Vehicle found at 4 *Code of Colorado Regulations* 723-6, particularly the Commission's Towing Carrier Rules found in Rules 6500 through 6514, 4 *Code of Colorado Regulations* 723-6.
6. Steven Knost doing business as Anytime Towing, Inc., Predator Recovery, Inc., and Sure Shot Recovery, Inc., is assessed a penalty of \$8,000.00 for the violations of Counts 1 and 3 through 13 of CPAN No. 131546, as well as Counts 2 through 10 of CPAN No. 132415. Respondent Knost shall pay this amount within thirty (30) days after the Commission's approval of the Settlement Agreement becomes final. The settled civil penalty of \$8,000.00 consists of a \$6,800.00 civil penalty, plus a 15 percent surcharge of \$1,200.00 pursuant to § 24-34-108, C.R.S.
7. Freddie Dickey is assessed a penalty of \$500.00 for the violations of Count 2 of CPAN No. 131546 and Count 1 of CPAN No. 132415. Respondent Dickey shall pay this amount

within thirty (30) days after the Commission's approval of the Settlement Agreement becomes final. The settled civil penalty of \$500.00 consists of a \$425.00 civil penalty, plus a 15 percent surcharge of \$75 pursuant to § 24-34-108, C.R.S.

8. Respondents shall pay to the Commission the total settled civil penalty of \$8,500.00 within thirty (30) days of the Commission's approval of the settlement and final decision in these Proceedings.

9. Respondent Knost will also issue a refund in the amount of \$385.27 to Jennifer Walthall within thirty (30) days of the Commission's approval of the settlement and final decision in this Proceeding. Mr. Knost will provide the Commission with proof of payment to Ms. Walthall within ten (10) days of issuing the refund to her.

10. Respondent Dickey is prohibited from towing any vehicles or facilitating the towing of any vehicle for one year following the Commission's approval of the Settlement Agreement, except for the towing of vehicles being repossessed by a creditor with a lien or security interest in a vehicle, as provided by § 40-10.1-405(a)(I), C.R.S.

11. For one year following the Commission's approval of the Settlement Agreement, Respondent Dickey must present proof to Commission Staff of possessing a valid driver's license in good standing and receive verification from Staff as to the validity and standing of the license before driving a vehicle in the course of his work.

12. If Respondent Knost fails to make the required payment of the total reduced civil penalty of \$8,000.00 by the required due date or if he fails to comply with all the terms and conditions of this Settlement Agreement, Respondent Knost shall be liable for the full civil penalty amount for the Counts to which he has admitted liability of \$26,823.75, which shall be due within

thirty (30) days of any notice of noncompliance with the terms of the Settlement Agreement issued by Commission Staff.

13. If Respondent Dickey fails to make the required payment of the total reduced civil penalty of \$500.00 by the required due date or if he fails to comply with all the terms and conditions of this Settlement Agreement, Respondent Dickey shall be liable for the full civil penalty amount for the Counts to which he has admitted liability of \$2,530.00, which shall be due within thirty (30) days of any notice of noncompliance with the terms of the Settlement Agreement issued by Commission Staff.

14. Proceeding Nos. 22G-0433TO and 22G-0434TO are closed.

15. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

16. As provided by § 40-6-106, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

- a.) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the recommended decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.
- b.) If a party seeks to amend, modify, annul, or reverse a basic finding of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge; and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

17. If exceptions to this Recommended Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ALENKA HAN

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script, appearing to read "G. Harris Adams".

G. Harris Adams,
Interim Director