

Decision No. R24-0939

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24G-0179TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

KLAUS' TOWING LLC DOING BUSINESS AS KLAUS' TOWING, INC.,

RESPONDENT.

**RECOMMENDED DECISION
GRANTING APPROVAL OF SETTLEMENT AGREEMENT
AND CLOSING PROCEEDING**

Issued Date: December 23, 2024

I. STATEMENT

1. This proceeding concerns Civil Penalty Assessment Notice ("CPAN") No.135862 issued by Commission Staff on April 18, 2024, against Respondent Klaus Towing LLC doing business as Klaus Towing Inc. ("Respondent" or "Klaus"). The CPAN assessed Klaus a total penalty of \$383,297.50 for 368 violations of rules contained in 4 *Code of Colorado Regulations* (CCR) 723-6, and more specifically listed in the CPAN.

2. The CPAN was personally served on April 18, 2024.

3. On May 8, 2024, Trial Staff of the Commission ("Staff") filed its Notice of Intervention as of Right and Entry of Appearance in this proceeding.

4. On May 22, 2024, the Commission referred this proceeding to an Administrative Law Judge ("ALJ") by minute entry.

5. On June 5, 2024, by Decision No. R24-0387-I, a prehearing conference was scheduled for July 9, 2024.

6. On July 10, 2024, by Decision No. R24-0495-I, the matter was set for an evidentiary hearing.

7. On September 19, 2024, the Parties filed their Joint Motion to Approve Settlement Agreement, Vacate the Evidentiary Hearing and Upcoming Procedural Deadlines. Attached to the filing was the Settlement Agreement.

8. On October 18, 2024, by Decision No. R24-0757-I, the Settlement Agreement was tentatively approved. The Parties were ordered to file an amendment to the Settlement Agreement by December 13, 2024.

9. On December 13, 2024, Staff filed its Joint Motion to Approve Amendment to the Settlement Agreement and Waiver of Response Time.

II. SETTLEMENT AGREEMENT

10. The basic terms of the Settlement Agreement are that the Respondent admits to:

- i. All 72 violations of C.R.S. § 40-10.1-405(3)(a);
- ii. All 14 violations of C.R.S. § 40-10.1-405(2)(a)(I); and
- iii. All 62 violations of Rule 6508(b)(III)(B).

11. Respondent states it committed a general violation of Rule 6007 by improperly acquiring and documenting the 72 towing authorizations at issue in this proceeding.

12. Respondent agrees to the following calculation of civil penalties:

- a. For C.R.S. § 40.10.1-405(3)(a): **\$22,770** = 72 x \$316.25
- b. For C.R.S. § 40-10.1-405(2)(a)(I): **\$4,427.50** = 14 x \$316.25
- c. For Rule 6508(b)(III)(B): **\$39,215** = 62 x \$632.50¹ = \$39,215

d. For Rule 6007: **\$88,550** = 70 x \$1,265

The sum of these four civil penalties is as follows: $\$154,962.50 = \$22,770 + \$4,427.50 + \$39,215 + \$88,500$.

13. To achieve resolution of this proceeding, Respondent agrees to pay 65 percent of this amount, which equals \$100,725.63.

14. Staff and Respondent (collectively, “the Settling Parties”) agree a 65 percent reduction of the total civil penalty from \$154,962.50 to \$100,725.63 represents a just and reasonable result and comports with the public interest because:

- a. Respondent agreed to ensure as many as possible of the 72 tows would be refunded;
- b. Respondent agreed to withdraw Respondent’s towing permits as well as towing permits of affiliated Colorado towing companies;
- c. Respondent has limited funds available;
- d. Respondent is unable to pay a \$154,962.50 total civil penalty (“nor a \$383,927.50 civil penalty”) even if it fully liquidates, and furthermore, its financial assets will continue to shrink as it winds up;
- e. the cost of litigation to Respondent if this matter proceeded to a fully litigated hearing and resultant decreasing funds available to pay a civil penalty if this matter were fully litigated;
- f. a mutual recognition by Staff and Respondent as to the time requirements and costs inherent in fully litigating the CPAN to both.
- g. the possibility the Commission could, pursuant to Rule 1302, further reduce a \$154,862.50 total civil penalty if Staff met its burden of proof at hearing;
and
- h. Respondent already ceased towing operations in Colorado prior to execution of the Settlement Agreement

15. Of the 72 tows associated with the CPAN, the Settling Parties agree Respondent paid \$6,333.96 to refund 21 towing fees and charges prior to the filing of the original Settlement Agreement.

16. Respondent has attempted to pay the remaining 51 towing fees and charges totaling \$16,878.82 by delivering refund checks via certified mail return receipt to the person who paid the towing fees and charges.

17. The Parties agreed that towing fees and charges refunded (*i.e.*, via cashing a check) would result in a reduction of the \$100,725.63 civil penalty if these checks are cashed on/before November 29, 2024.

18. Respondent agreed to provide evidence of additional refunded towing charges and fees to Staff by November 29, 2024.

19. The Parties were ordered to file a final amount of refunded towing fees and charges by December 13, 2024.

20. Based upon the December 13, 2024, filing, an additional \$3,211.14 in towing fees and charges was refunded.

21. By subtracting the additional refunded tows and charges, Respondent shall pay $\$97,514.49 = (\$100,725.63 - \$3,211.14)$. Respondent shall make this payment within seven calendar days of a final Commission decision in this proceeding.

22. Respondent shall, within 7 calendar days of a final Commission decision in this proceeding, file necessary forms to withdraw the Colorado PUC towing permits associated with Respondent and any other entity owned or operated by one or more of Respondent's owners, principals, officers, members, partners, or directors, including but not limited to: Towing Operations LLC doing business as Wyatts Towing, Boulder Valley Towing, and Lone Star Towing, (collectively, "Wyatt's Family of Companies").

23. While these additional entities are not parties to this proceeding, as stated in the affidavit of Troy Porras, Mr. Porras possesses the authority to withdraw these permits.

24. The Settling Parties shall continue to cooperate to complete other ongoing investigatory matters concerning Respondent and the Wyatt's Family of Companies on issues arising outside this proceeding.

25. In recognition that Respondent (as well as the Wyatt's Family of Companies") have ceased towing, agreed to towing permit withdrawals, and to cooperate on all investigatory matters and requests for refunds—Staff states it does not currently foresee a need to pursue additional CPANs against Respondent (and the Wyatt's Family of Companies).

III. FINDINGS AND CONCLUSIONS

26. The undersigned ALJ finds good cause to approve the Settlement Agreement. It is found that the civil penalty of \$97,514.49, which includes any surcharge, is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

27. The ALJ finds it is in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement and avoiding a hearing in this matter.

28. Pursuant to the terms of the Settlement Agreement entered between Respondent and Staff, Respondent is assessed a civil penalty of \$97,514.49, which includes any surcharge, payable according to the terms of the Settlement Agreement as delineated above.

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

IV. ORDER

A. It is Ordered That:

1. The Joint Motion for Approval of the Settlement Agreement as amended on December 13, 2024, is granted.

2. The Settlement Agreement as amended on December 13, 2024, entered between Transportation Staff of the Commission and Klaus Towing LLC doing business as Klaus Towing Inc. (“Klaus”), is approved.

3. A reduced Civil Penalty Assessment of \$97,514.49, which includes any surcharge, is assessed against Klaus, pursuant to the terms of the Settlement Agreement and amendment as detailed above and attached to this Decision as Appendix A and Appendix B.

4. Klaus shall, pursuant to the terms of the Settlement Agreement, pay the amounts required under this Settlement Agreement within 60 days of the Commission’s final order approving this Settlement Agreement as detailed above and attached to this Decision as Appendix A and Appendix B.

5. If Klaus fails to timely make the payments required under the Settlement Agreement, Klaus shall be immediately liable for the full penalty amount of \$383,927.50 less any payments made.

6. Proceeding No. 24G-0179TO is closed.

7. 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.

8. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

9. If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the 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.

10. If a party seeks to amend, modify, annul, or reverse basic findings 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.

11. If exceptions to this 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)



ATTEST: A TRUE COPY

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT I. GARVEY

Administrative Law Judge

Rebecca E. White,
Director