

Decision No. R08-0844

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08G-153EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

DENVER COACH, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
G. HARRIS ADAMS
ASSESSING AND PARTIALLY
SUSPENDING CIVIL PENALTY**

Mailed Date: August 11, 2008

I. STATEMENT, FINDINGS, AND CONCLUSIONS

1. This is a civil penalty assessment proceeding brought by the Staff of the Colorado Public Utilities Commission (Staff) against the Respondent, Denver Coach, Inc. (Denver Coach or Respondent).

2. On April 26, 2008, Staff served Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 87268 (CPAN) on Denver Coach. That action commenced this proceeding. The CPAN alleges a failure to have vehicles periodically inspected and assessed Denver Coach a total penalty of \$1,100 for one violation of Rule 6102(a)(1) of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado Regulations 723-6 and 49 CFR Part 396.17(a). The violation date was April 22, 2008.

3. On May 7, 2008, by Minute Order, the Commission referred this matter to an Administrative Law Judge (ALJ).

4. On May 16, 2008, the Commission issued an Order Setting Hearing and Notice of Hearing.

5. Staff entered its appearance on May 16, 2008. Staff is represented by counsel.

6. The parties in this matter are Staff and Respondent.

7. By Decision No. R08-0511, Respondent was ordered to have legal counsel enter an appearance in this proceeding on or before June 20, 2008. Respondent was ordered, in the alternative, to show cause why it is not required to be represented by legal counsel.

8. By Decision No. R08-0637-I, it was found that Respondent failed to comply with Decision No. R08-0511 and ordered Respondent to be represented by counsel in this proceeding.

9. By Decision No. R08-0698-I, the hearing in this matter was rescheduled for August 7, 2008.

10. On August 6, 2008, counsel for Staff and Mr. Michael Jorstad, owner of Respondent, informally contacted the undersigned ALJ to orally request that the hearing set to commence in this docket be vacated and to report that a comprehensive settlement in principle has been reached. By Decision No. R08-0818-I, the scheduled hearing was vacated and the parties were ordered to make a filing memorializing the agreement reached.

11. On August 8, 2008, the Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time was filed. The Stipulation and Settlement Agreement between Staff and Respondent was attached to the motion.

12. In accordance with § 40-6-109, C.R.S., the Administrative Law Judge (ALJ) now transmits to the Commission the record and exhibits in this proceeding along with a written recommended decision.

13. A review of the joint motion indicates that the motion was jointly filed by Staff and Respondent. However, Respondent executed the motion by “Michael Jorstad, Owner, Denver Coach, Inc.” No cause is shown as to why Respondent should not be represented by counsel and no demonstrable attempt has been made to demonstrate compliance with Decision No. R08-0637-I. Therefore, the motion will be considered as a motion filed on behalf of Staff. The purported filing on behalf of Respondent will be accepted as acquiescence to Staff’s motion.

14. The agreement was reached in the spirit of compromise and in consideration of the hazards of litigation. Approval of the settlement reached will minimize expenses of litigation and promote administrative efficiency.

15. Approval of the settlement will not have a precedential affect upon other Commission matters. *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).

16. The stipulation recites several mitigating factors. The Parties agree to, and support, a reduction of the proposed civil penalty to \$600 as part of the settlement based upon consideration of these factors:

- a) Respondent acknowledges wrongdoing, has taken corrective action, and has expressed a commitment to maintain compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.
- b) Staff is satisfied that assessing Respondents a civil penalty of \$600 under the terms herein is sufficient to motivate Respondents to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

17. In order to settle their differences in the within action, the Parties agree as follows:

- a) Respondents admit liability to the violation in CPAN No. 87269.
- b) In consideration of Respondent's admission of liability, and based upon consideration of the mitigating circumstances above, Staff agrees to reduce the amount of the civil penalty from \$1,100 to \$600, with the remaining \$500 permanently suspended upon compliance with the agreed-upon payment terms.
- c) Respondents agree to pay \$600 to the Colorado Public Utilities Commission payable in two installments as follows: \$300.00 within ten days after the Commission's approval of this Agreement becomes final and \$300.00 within 30 days thereafter. In the event that Respondent fails to timely pay the reduced amount according to these terms, the suspended portion of the assessment shall be lifted and the remaining balance due, less any payments made, will be due and payable immediately.

18. Good cause having been demonstrated for the acceptance of the Stipulation and Settlement Agreement, it will be accepted.

II. ORDER

A. The Commission Orders That:

- 1. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time is waived.
- 2. The Joint Motion to Approve Stipulation and Settlement Agreement and Waive Response Time filed by Staff of the Commission on August 8, 2008, is granted.
- 3. The Stipulation and Settlement Agreement (Settlement) filed on August 8, 2008, a copy of which is attached hereto as Appendix A, is approved.
- 4. The Settlement is incorporated by reference and made an order of the Commission as if fully set forth herein. All Parties shall comply with all terms of the Settlement.
- 5. Denver Coach, Inc. (Respondent) is assessed a penalty of \$1,100 for one violation of Rule 6102(a)(1) of the Rules Regulating Transportation by Motor Vehicle, 4 Code of Colorado

Regulations 723-6. However, \$500 of the civil penalty assessed is suspended on the condition that: (1) payment in the amount of \$300 is received by the Commission within ten days after the Commission's approval of this Agreement becomes final and \$300.00 is received within 30 days of the due date of the first installment.

6. If Respondent violates any part of the condition for the suspension of the civil penalty in paragraph II.A.4 above, the suspension shall immediately expire and any remaining balance of the total assessed penalty shall be due and payable to the Commission within ten days thereof.

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.

a) 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.

b) 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.

9. 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.

(SEAL)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

G. HARRIS ADAMS

Administrative Law Judge

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

Docket No. 08G-153EC
Civil Penalty Assessment Notice No. 87269

PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO,

Complainant,

v.

DENVER COACH, INC.

Respondent.

STIPULATION AND SETTLEMENT AGREEMENT

Staff of the Public Utilities Commission (Staff) and Respondent Denver Coach, Inc. (Respondent) (collectively the "Parties") enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced docket as a complete and final resolution of all issues.

Background

1. On April 24, 2008, the Commission served Respondent Civil Penalty Assessment Notice No. 87269 (the "CPAN") by certified mail seeking civil penalties of \$1,100 (or \$550 if paid within 10 days). The CPAN alleged Respondent failed to have vehicles periodically inspected as required by Commission Rule 4 CCR 723-6-6102(a)(I) and 49 CFR Part 396.17(a). The violation date was April 22, 2008.

2. On May 16, 2008, the undersigned counsel for Staff entered his appearance on behalf of Staff.

3. The Commission set hearing in this matter for July 10, 2008, which hearing was vacated and rescheduled for August 7, 2008 by Decision No. R08-0698-I.

4. Prior to hearing, the Parties reached a comprehensive settlement in principle and the undersigned counsel for Staff and Mr. Michael Jorstad, owner of Respondent, presented by telephone an oral unopposed motion to Administrative Law Judge (ALJ) G. Harris Adams to vacate the August 7, 2008 hearing. This motion was granted by Decision No. R08-0818-I.

5. The Agreement herein has been reached in the spirit of compromise and in light of the uncertainties of trial. The Agreement has also been reached to avoid the costly expense of litigation. The Parties note that the Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to hearing this matter. Lastly, the Parties acknowledge that this Agreement will not have precedential effect on any other Commission matters. *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).

6. The Parties submit the public interest is served by assessing Respondent a reduced civil penalty of \$600 under the terms herein. In reducing the penalty, the Parties considered the following mitigating factors:

- a. Respondent acknowledges wrongdoing, has taken corrective action and has expressed a commitment to maintain compliance with the Public Utilities Laws and Commission Rules on a going-forward basis.
- b. Staff is satisfied that assessing Respondent a civil penalty of \$600 under the terms herein is sufficient to motivate Respondent to remain compliant with the Public Utilities Laws and Commission Rules on a going-forward basis.

Settlement Agreement

7. Staff and Respondent hereby stipulate and agree as follows:

- a. Respondent admits liability to the 1 violation in the CPAN.
- b. In consideration of Respondent's admission of liability in subparagraph 7(a), and for the reasons expressed in paragraphs 5 and 6, Staff agrees to reduce the amount of the civil penalty from \$1,100

to \$600, with the remaining \$500 permanently suspended upon compliance with the payment plan in 7(c) below.

- c. Respondent agrees to pay \$600 to the Colorado Public Utilities Commission in two (2) installments as follows: \$300 within ten (10) days after the Commission's approval of this Agreement becomes final and \$300 thirty (30) days thereafter.
- d. In the event Respondent fails to comply with the payment plan described in 7(c) above, then the entire amount of \$1100, less any amount paid, will be due and payable immediately.

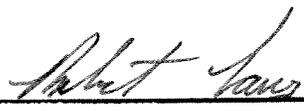
8. In the event this Agreement is modified or not approved in its entirety, either Staff or Respondent, at that party's option, may withdraw from this Agreement by filing a notice with the Commission in this docket within seven (7) days of entry of such Order. In that event, this matter shall be set for hearing.

EXECUTED this 7th day of August 2008.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By: 
Robert Laws

By: 
David M. Nocera, 28776*

1560 Broadway Suite 250
Denver, Colorado 80202

Senior Criminal Investigator
Colorado Public Utilities Commission

Senior Assistant Attorney General
Business and Licensing Section
1525 Sherman Street, 5th Floor
Denver, Colorado 80203
Telephone: (303) 866-5295
Facsimile: (303) 866-5395
dave.nocera@state.co.us

COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION

*Counsel of Record

By: 
Michael Jorstad
Owner, Denver Coach, Inc.
4469 Tennyson St.
Denver, Colorado 80212