

Decision No. R17-0585

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 17G-0275HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

SHAWN J. MARZAK DOING BUSINESS AS ALL AMERICAN MOVERS LLC,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ROBERT I. GARVEY
APPROVING SETTLEMENT AGREEMENT;
MODIFYING TERMS OF CPAN; VACATING HEARING;
AND WAIVING RESPONSE TIME TO MOTION**

Mailed Date: July 18, 2017

I. STATEMENT

1. On May 1, 2017, the Staff of the Colorado Public Utilities Commission (Staff) served Civil Penalty Assessment Notice or Notice of Complaint No. 118178 (CPAN) on Shawn J. Marzak, doing business as All American Movers (Respondent). That CPAN commenced this Proceeding.

2. On May 17, 2017, by Minute Order, Proceeding No. 17G-0275HHG was referred to an administrative law judge (ALJ) by minute entry of the Colorado Public Utilities Commission.

3. On May 24, 2017, by Decision No. R17-0422-I, an evidentiary hearing was scheduled for June 22, 2017.

4. On June 22, 2017, the evidentiary hearing was called to order. At the start of the hearing, the Respondent requested a continuance in order to seek counsel. Staff did not object to the request.

5. The evidentiary hearing was rescheduled for July 20, 2017.

6. On July 18, 2017, the parties filed their Stipulation and Settlement Agreement and Joint Motion to Approve Stipulation and Settlement Agreement (Agreement) and to Waive Response Time.

7. According to the terms of the Agreement, Staff and Respondent agree to the following:

- i. Respondent admits liability to all violations set forth in the CPAN.
- ii. Respondent will obtain a PUC HHG permit and keep it in effect at all times while operating as an intrastate HHG mover.
- iii. Respondent agrees to pay the full amount of the fine on Count 2, §40-10.1-502(1)(a), which is operating and/or offering to operate as a mover in intrastate commerce without a PUC permit. The amount of the fine on Count 2 is \$1,265.00 (\$1,100.00 fine + 15% surcharge) and will be paid in a single payment.
- iv. Staff agrees to dismiss Count 1, §40-10.1-107(1).

8. Respondent agrees to pay the full amount of \$1,265.00 in a single payment within 15 days of the Commission's final order approving the Agreement.

9. Respondent agrees and stipulates the failure to complete its payment obligations as set forth in the Agreement shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or a request for rehearing, reargument, and reconsideration or any other form of appeal.

10. The parties additionally agree that the Agreement has been reached to avoid the costly expense of litigation and that the Agreement promotes administrative efficiency by avoiding the time and expense that would be required to hear this matter.

11. Finally, the parties considered the following mitigating factors:

- i. Respondent acknowledges his wrongdoing.
- ii. Respondent is a single owner;
- iii. Respondent applied for a PUC HHG permit on June 22, 2017;
- iv. On July 10, 2017, Respondent provided proof that required insurances (vehicle liability, general liability and cargo liability) were in effect at the time of the violations set forth in the CPAN;
- v. Respondent engaged Staff in settlement discussions and has been cooperative with Staff;
- vi. Assessing Respondent a civil penalty of \$1,265.00 under the terms herein is sufficient motivation for Respondent to remain in compliance with the Public Utilities Laws and Commission Rules on a going forward basis.

II. FINDINGS AND CONCLUSIONS

12. The undersigned ALJ finds good cause to grant the Agreement. It is found that the civil penalty of 1,265.00 is sufficient to motivate the Respondent to avoid any further violations of Commission regulations.

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

14. Therefore pursuant to the terms of the Agreement entered into between Respondent and Staff, Respondent is assessed a civil penalty of \$1,265.00 payable according to the terms of the Agreement as delineated above.

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

III. ORDER

A. The Commission Orders That:

1. The evidentiary hearing scheduled to be held in this proceeding on July 20, 2017 is vacated.

2. The Stipulation and Settlement Agreement entered into between Transportation Staff of the Commission and Shawn J. Marzak, doing business as All American Movers, is approved.

3. A reduced Civil Penalty Assessment of \$1,265.00 is assessed against Shawn J. Marzak, doing business as All American Movers, pursuant to the terms of the Stipulation and Settlement Agreement as detailed above.

4. Response time to the Joint Motion to Approve Stipulation and Settlement Agreement and to Waive Response Time and the Joint Motion to Vacate Hearing is waived.

5. The Stipulation and Settlement Agreement is attached to this Decision as Appendix A.

6. The 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.

7. 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.

- 8. 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

ROBERT I. GARVEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director