

Decision No. R20-0009

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 19G-0508TO

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

KLAUS' TOWING, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
CONOR F. FARLEY
GRANTING JOINT MOTION TO APPROVE
SETTLEMENT AGREEMENT, APPROVING
SETTLEMENT AGREEMENT, ASSESSING
CIVIL PENALTY, AND CLOSING PROCEEDING**

Mailed Date: January 7, 2020

I. STATEMENT

A. Procedural history

1. On September 23, 2019, the Colorado Public Utilities Commission (Commission) filed Civil Penalty Assessment or Notice of Complaint to Appear (CPAN) No. 124040, which alleges a single violation by Klaus' Towing, Inc. (Klaus' Towing or Respondent) of Rule 6508(b)(1) of the Commission's Rules Regulating Transportation by Motor Vehicle¹ on May 4, 2019. The underlying basis for the alleged violation is that Klaus' Towing failed to obtain proper authorization before the performance of a nonconsensual tow. CPAN No. 124040

¹ 4 Code of Colorado Regulations (CCR) 723-6.

states that the civil penalty assessed for the alleged violations is \$1,100.00, plus an additional 15 percent surcharge, for a total of \$1,265.00, but that if Klaus' Towing pays the civil penalty within ten calendar days of its receipt of the CPAN, the civil penalty will be reduced to \$632.50. Finally, the CPAN states that, if the Commission does not receive payment within ten days, the CPAN will convert into a Notice of Complaint to Appear and a hearing will be scheduled at which the Commission Staff will seek the "Total Amount" of \$1,265.00.² The CPAN also states that the Commission may order Klaus' Towing to cease and desist from violating statutes and Commission rules.³

2. The CPAN states that the Commission served the CPAN by U.S. Mail delivered to the address on file with the Commission for service of process on September 20, 2019.

3. Klaus' Towing has not paid any amount, much less the reduced civil penalty amount or the total civil penalty amount, of the CPAN.

4. On October 4, 2019, counsel for Trial Staff of the Commission (Staff) entered an appearance in this proceeding.

5. On October 16, 2019, the Commission referred this proceeding to an Administrative Law Judge (ALJ) for disposition. The proceeding was subsequently assigned to the undersigned ALJ.

6. On November 1, 2019, the parties filed a Stipulated Motion for Approval of the Stipulation and Settlement Agreement and Dismissal of Civil Penalty and Assessment Notice 124040 (Joint Motion) and attached the Joint Stipulation and Settlement Agreement (Settlement Agreement). The Settlement Agreement and Stipulated Motion state that Trevor Forbes has the

² CPAN No. 124040 at 2.

³ *Id.*

authority to enter into the Settlement Agreement on behalf of Respondent. Neither states that anybody else has such authority. However, Troy Porras – and not Mr. Forbes – signed the Settlement Agreement on behalf of the Respondent. The ALJ informed the attorneys for the parties of this fact by email on November 11, 2019, and the attorney for Staff informed the ALJ in a response email that copied the attorney for Klaus' Towing that the parties would revise and resubmit the filing.

7. On December 18, 2019, the parties filed an Amended Stipulated Motion for Approval of the Stipulation and Settlement Agreement (Amended Joint Motion) and Amendment to Stipulated Settlement Agreement (Amended Settlement Agreement). The Amended Settlement Agreement states that Mr. Porras has the authority to enter into the Settlement Agreement on behalf of the Respondent. Mr. Porras signed the Amended Settlement Agreement on behalf of Respondent.

B. Joint Motion and Settlement Agreement

8. The Joint Motion and Settlement Agreement state that Staff and Respondent have agreed upon a settlement that resolves all issues in the proceeding. According to Staff and Respondent, the Settlement Agreement promotes administrative efficiency by avoiding the expenditure of the time and expense necessary to hear this matter⁴ and is in the public interest.⁵ They also acknowledge that the Settlement Agreement will not have precedential effect on any other Commission matters.⁶

⁴ Joint Motion at 3 (¶ 6); Agreement at 4 (¶ 8).

⁵ Joint Motion at 3 (¶ 6); Agreement at 4 (¶ 9).

⁶ Joint Motion at 3 (¶ 7).

9. According to the terms of the Settlement Agreement, Staff and Respondent agree to the following: (a) Respondent agrees to pay a reduced civil penalty of \$632.50, which comprises a \$550.00 penalty and a \$82.50 surcharge, in one payment within 14 days of the Commission's final decision in this Proceeding for the violation identified in the CPAN; (b) Respondent has paid a full refund to the complainant; (c) if Respondent violates any of the terms of the Settlement Agreement, Respondent shall be liable for the full civil penalty amount of \$1265.00, which will be due and owing immediately; (d) Respondent agrees that it will comply with the requirements of 4 CCR 723-6-6508(b)(I); and (e) Respondent does not admit liability for the violation alleged in the CPAN; and (f) in deciding to enter the Settlement Agreement, Staff considered the following mitigating factors: (i) "[t]he Respondent contacted the PUC within 10 days to resolve this proceeding;" (ii) "[t]he Respondent actively worked with the PUC to discuss the issues that led to the CPAN and to resolve the CPAN; (iii) [t]he Respondent paid a full refund to the complainant;" (iv) "[t]he Respondent was at a disadvantage in this case because the third-party who could verify the authorization for the tow would not cooperate and did not return Staff's telephone calls to verify that he had the authority to authorize the tow."⁷

10. Additionally, Respondent stipulates that its failure to timely complete its payment obligation shall also be deemed a waiver by Respondent of any and all rights to file exceptions and/or all rights to file an application for rehearing, reargument, or reconsideration or any other form of appeal of this Decision.⁸

⁷ Agreement at 3 (¶ 6.A.ii).

⁸ *Id.* at 4-5 (¶ 12).

11. Staff and Respondent agree that all matters that were raised or could have been raised in this proceeding have been resolved by the Settlement Agreement.⁹

12. Staff and Respondent also agree that

Should this Settlement Agreement be modified or not approved in its entirety by 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 such order. In this event, this Settlement Agreement shall be void and this matter set for hearing.¹⁰

13. Finally, in the Joint Motion and Amended Joint Motion, the parties request that the Commission issue an order: (a) approving the Settlement Agreement; (b) stating the agreement in paragraph 11 above; and (c) waiving response time to the Joint Motion and Amended Joint Motion.

II. FINDINGS AND CONCLUSIONS

14. The undersigned ALJ finds good cause to grant the Joint Motion and Amended Joint Motion and accept the Settlement Agreement and Amended Settlement Agreement. It is found that a civil penalty assessment of \$632.50 for the violation of Rule 6508(b)(1) for failure to obtain proper authorization before the performance of a nonconsensual tow identified in the CPAN, and refund of the tow fees, is an adequate penalty and provides sufficient motivation for Respondent to avoid similar violations of Commission regulations.

15. The ALJ further finds it in the public interest to conserve valuable resources by adopting the terms of the Settlement Agreement and Amended Settlement Agreement. Accordingly, the Settlement Agreement and Amended Settlement Agreement are approved.

⁹ *Id.* at 1.

¹⁰ *Id.* at 5 (¶ 13).

Approval of the Settlement Agreement and Amended Settlement Agreement will not have a precedential effect on other Commission matters.¹¹

16. Therefore, pursuant to the terms of the Settlement Agreement and Amended Settlement Agreement entered into between Staff and Respondent, Respondent will be ordered to pay a civil penalty of \$632.50 for the violation of Rule 6508(b)(1) for failure to obtain proper authorization before the performance of a nonconsensual tow identified in the CPAN.¹² Failure to make the timely payment or to surrender the permit of Klaus' Towing as agreed to in the Settlement Agreement will result in the waiver by Respondent of its rights to file exceptions or a request for rehearing, reargument, and reconsideration, or to file any other form of appeal.

17. Response time to the Joint Motion and Amended Joint Motion has expired and no party filed any document in response thereto. Accordingly, the request to waive response time shall be denied as moot.

18. 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 request to waive response time to the Stipulated Motion for Approval of the Stipulation and Settlement Agreement and Dismissal of Civil Penalty and Assessment Notice 124040 (Joint Motion) filed on November 1, 2019 and the Amended Stipulated Motion for

¹¹ 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).

¹² 4 CCR 723-6.

Approval of the Stipulation and Settlement Agreement (Amended Joint Motion) filed on December 18, 2019 are denied as moot.

2. The Joint Motion and Amended Joint Motion are otherwise granted.

3. The Joint Stipulation and Settlement Agreement (Settlement Agreement) and Amendment to Stipulated Settlement Agreement (Amended Settlement Agreement) are accepted and approved. A copy of the Settlement Agreement and Amended Settlement Agreement, attached hereto as Appendix A, are incorporated herein by reference. The parties shall comply with the terms of the Settlement Agreement and Amended Settlement Agreement.

4. Klaus' Towing, LLC (Respondent) is assessed a penalty of \$632.50 for the violation of Rule 6508(b)(1) for failure to obtain proper authorization before the performance of a nonconsensual tow identified in the Civil Penalty Assessment Notice.¹³ Respondent shall pay this amount within 14 days after the Commission's approval of the Agreement becomes final.

5. Proceeding No. 19G-0508TO is closed.

6. 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.

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

¹³ 4 CCR 723-6.

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

CONOR F. FARLEY

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,
Director