

Decision No. R04-1122

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-460HHG

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

FATHER & SON MOVING & STORAGE OF DENVER, COLORADO, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MANA L. JENNINGS-FADER
ACCEPTING PAYMENT AND ADMISSION
OF LIABILITY, ASSESSING A CIVIL
PENALTY, AND CLOSING DOCKET**

Mailed Date: September 27, 2004

I. STATEMENT, FINDINGS, AND CONCLUSION

1. The issuance of Civil Penalty Assessment Notice No. 71082 (CPAN) commenced this proceeding. The CPAN alleges that, on August 20, 2004, Father & Son Moving & Storage of Denver, Colorado, Inc. (Respondent), provided to a prospective shipper a document which did not comply with statutory and rule requirements. Specifically, the CPAN alleges that the document did not comply with § 40-14-108(1)(f), C.R.S., and with Rule 4 *Code of Colorado Regulations* (CCR) 723-35-6621(b)(VIII) (count no. 1); that the document did not comply with § 40-14-108(2), C.R.S. (count no. 2); and that the document did not comply with § 40-14-108(3), C.R.S., and with Rule 4 CCR 723-35-6621(b)(III) (count no. 3).

2. The CPAN states that, if the Commission received payment within ten days from the date of the CPAN's issuance, the civil penalty would be \$1,650. The CPAN further states that, if the Commission did not receive payment within ten days, the Commission Staff (Staff) would seek a civil penalty in the amount of \$3,300, which is the maximum civil penalty for the three alleged violations. The CPAN also states that payment of the assessment is an acknowledgment (*i.e.*, admission) of liability. *See* Respondent's Options, CPAN at 2.

3. On September 9, 2004, Staff served the CPAN on Respondent.

4. On September 13, 2004, within the ten-day time period, Respondent tendered its payment of \$1,650 by check. In addition, Respondent admitted the three alleged violations. *See* CPAN at 2, signed by Respondent.

5. Respondent does not dispute the Commission's jurisdiction. The undersigned Administrative Law Judge (ALJ) finds and concludes that the Commission has subject matter jurisdiction over this case and personal jurisdiction over the Respondent.

6. Respondent has admitted, and on that basis the ALJ finds and concludes, that, on August 20, 2004, Respondent violated the provisions of §§ 40-14-108(1)(f), 40-14-108(2), and 40-14-108(3), C.R.S., and the provisions of Rules 4 CCR 723-35-6621(b)(III) and (VIII) as alleged in the CPAN.

7. In accordance with the provisions of the CPAN, the civil penalty to be assessed in this proceeding is \$1,650, which amount Respondent tendered by check to the Commission on September 13, 2004. The ALJ finds and concludes that, assuming the check clears and the money is collected by the Commission, the \$1,650 civil penalty is reasonable; is in accord with Commission procedures and policy; and is in the public interest.

8. The ALJ finds and concludes that, assuming the check clears and the money is collected by the Commission, this docket should be, and will be, closed.

9. The ALJ finds and concludes that, in the event the check does not clear and the Commission does not collect the money, the \$1,650 payment was not made within the required ten days; the maximum civil penalty is \$3,300; the acknowledgment is void; and this docket should not be closed. In the event the check does not clear, Staff may file, within 14 days of learning that the check did not clear, a request to reopen this proceeding and may cite this Decision as the basis for the request to reopen.

10. Pursuant to § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Father & Son Moving & Storage of Denver, Colorado, Inc., has violated §§ 40-14-108(1)(f), 40-14-108(2), and 40-14-108(3), C.R.S., and the provisions of Rule 4 *Code of Colorado Regulations* 723-35-6621(b)(III) and of Rule 4 *Code of Colorado Regulations* 723-35-6621(b)(VIII), as more fully set out above and in Civil Penalty Assessment Notice or Notice of Complaint to Appear No. 71082-CPAN.

2. A civil penalty is assessed against Father & Son Moving & Storage of Denver, Colorado, Inc., in the amount of \$1,650, provided the submitted payment clears and the money is collected by the Commission.

3. Docket No. 04G-460HHG is closed, subject to reopening pursuant to ¶ II.4.

4. In the event the submitted payment does not clear and the money is not collected by the Commission, the maximum civil penalty in this proceeding is \$3,300; the acknowledgment is void; and Docket No. 04G-460HHG may be reopened. In the event the submitted payment does not clear, Commission Staff may file, within 14 days of learning that the payment did not clear, a request to reopen this proceeding.

5. 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.

6. 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.

7. 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.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge

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