

Decision No. R04-1579

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04G-451EC

COLORADO PUBLIC UTILITIES COMMISSION,

COMPLAINANT,

V.

CENTENNIAL LIMOUSINE, INC.,

RESPONDENT.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
ANTHONY M. MARQUEZ
ASSESSING CIVIL PENALTY PURSUANT TO
STIPULATION FOR SETTLEMENT**

Mailed Date: December 30, 2004

I. STATEMENT

1. This docket concerns a proposed civil penalty assessment against Respondent Centennial Limousine, Inc. (Centennial). Commission Staff (Staff) initiated this proceeding by issuing Civil Penalty Assessment Notice (CPAN) No. 71105 to Centennial on August 25, 2004.

2. CPAN No. 71105 alleged that Centennial had violated a number of Commission rules including:

- Count 1—twenty-five violations of 4 CCR 723-15-2.1 and CFR 395.8(a) (no record of duty status);
- Count 2—twenty violations of 4 CCR 723-15-2.1 and CFR 396.11(a) (missing daily vehicle inspection reports);

- Count 3—one violation of 4 CCR 723-15-2.1 and CFR 391.11(a) and 391.27 (using unqualified driver);
- Count 4—one violation of 4 CCR 723-15-2.1 and CFR 391.21(a) (failure to require driver to produce employment application);
- Count 5—one violation of 4 CCR 723-15-2.1 and 391.51(b)(1) (failure to keep employment application in driver qualification file);
- Count 6—one violation of 4 CCR 723-15-2.1 and CFR 391.25(a) (failure to inquire into a driver's record within the last 12 months);
- Count 7—one violation of 4 CCR 723-15-2.1 and CFR 391.51(b)(2) (failure to maintain in qualification file past employment verification); and
- Count 8—one violation of 4 CCR 723-15-2.1 and CFR 393.75(a) (tires with steel cord showing).¹

The total penalty proposed by Staff in CPAN No. 71105 was \$10,200.

3. Staff served the CPAN on Centennial, through certified mail, on August 30, 2004.

The CPAN informed Centennial that it could pay a discounted penalty of \$5,100 in settlement of the CPAN, if it paid within ten days of receipt of the notice.

4. Centennial did not accept Staff's offer to pay a discounted penalty and, instead, proceeded to hearing.

5. In accordance with the Order Setting Hearing, the undersigned Administrative Law Judge (ALJ) convened the hearing in this matter on December 7, 2004. Staff appeared through its counsel, and Centennial appeared through its owner and operator Jamal Marrakchi.

¹ The Commission's rules incorporate by reference provisions of the Code of Federal Regulations. The references to "CFR" and a section number are as they appear in the CPAN. That is, the CPAN does not contain a reference to a specific title in the Code of Federal Regulations. Apparently, the CPAN is intended to refer to various sections in Title 49 of the CFR (*e.g.*, 49 CFR 395.8(a)). The CPAN's failure to refer to the CFR title number in citing to the various alleged violations raises the question whether the CPAN was defective. That is, without a complete CFR reference, the Respondent may have argued that it was not sufficiently apprised of the alleged violations. In light of the Settlement, however, the ALJ concludes that Centennial waived any potential argument regarding the adequacy of the notice.

6. At the hearing and in support of the CPAN, Staff presented the testimony of witness Opeka and Exhibits 1 through 8. After Mr. Opeka's direct testimony, but before cross-examination, Staff and Centennial discussed the possibility of settlement of the CPAN.² Those discussions were successful, and the parties, on the record, then informed the ALJ that no further proceedings in this matter would be necessary if the parties' agreement was approved. The ALJ directed the parties to formalize their agreement in writing and file an appropriate pleading in this docket. The hearing was adjourned to allow the parties to do so.

7. Pursuant to the ALJ's directives, the parties, on December 14, 2004, filed their Stipulation for Settlement of Civil Penalties (Settlement) and Motion to Approve Stipulation for Settlement of Civil Penalties. The Settlement reflects the parties' oral agreement at the hearing. Generally, the Settlement, for the reasons stated by Staff at hearing, proposes to reduce the civil penalty to \$1,200, and, in return, Centennial agrees to pay that amount in three monthly installments.

8. Now being duly advised in the matter, the ALJ grants the motion to approve the Settlement, and the Settlement is hereby approved.

II. FINDINGS AND CONCLUSIONS

9. In the Settlement, Centennial admits to each of the alleged violations in counts 1, 2, 3, and 8 of the CPAN (paragraph 2, *supra*). In return for those admissions, Staff proposes to assess a total penalty for those violations of \$1,200. Centennial, at the hearing, expressed concern at paying this penalty amount in one payment. Consequently, Staff agrees that Centennial may pay the civil penalty in three monthly installments of \$400 each. The first payment is due ten days after the effective date of the Commission order approving the

² Those discussions were held off the record and outside the presence of the ALJ.

Settlement; the second 30 days after the due date of the first payment, and the final payment 30 days after that. Staff also agrees to dismiss counts 4 through 7 in the CPAN (paragraph 2, *supra*).

10. The ALJ finds that a sufficient basis exists to approve the Settlement. Notably, even without Centennial's admissions in the Settlement, the direct testimony of witness Opeka provides credible information to uphold the allegations in the CPAN. Mr. Opeka explained and documented the basis for each one of the allegations in the CPAN, and sufficient reason exists to conclude that Centennial violated the provisions cited there.

11. The record also provides sufficient information to justify Staff's concessions in the Settlement. In his direct testimony, Mr. Opeka explained that when the CPAN was issued, Staff was operating under policies that it eventually concluded were unduly harsh towards small carriers, such as Centennial, and unduly lenient to large carriers. Given Staff's conclusions, it has since changed its policies for assessing civil penalties upon carriers. Mr. Opeka testified that if Staff's new policies were in effect when the CPAN was issued against Centennial, the assessment would have been \$2,400 for those violations alleged in CPAN No. 71105. In particular, Staff's new policies would cap the penalty assessments at \$1,000 for counts 1 and 2. Mr. Opeka also explained that counts 4 through 7 (paragraph 2, *supra*) would not have been issued under the new policies. And in keeping with its practice of offering reduced penalties (*i.e.*, one-half of the full assessment) if carriers admit the alleged violations and make prompt payments, Staff, in the Settlement, is now willing to accept one-half of the modified \$2,400 assessment—the amount of the penalty assessment if Staff's new policies had been in effect when this CPAN was issued—in return for Centennial's admissions and agreements in the Settlement.

12. The ALJ concludes that the testimony presented at hearing, Centennial's admissions in the Settlement, and Staff's explanation of its new policies for assessing civil penalties upon carriers provide sufficient basis to approve the Settlement. The proposed penalty of \$1,200 and the proposed manner of payment are appropriate in light of the evidence in the record. Therefore, the motion to approve the Settlement will be granted.

13. In accordance with § 40-6-109, C.R.S., the ALJ recommends that the Commission enter the following Order.

III. ORDER

A. The Commission Orders That:

1. The Motion to Approve Stipulation for Settlement of Civil Penalties is granted.
2. The Stipulation for Settlement of Civil Penalties is approved.
3. Respondent Centennial Limousine, Inc., is assessed a total penalty of \$1,200 in accordance with the terms of the Stipulation for Settlement of Civil Penalties.
4. In the event Respondent Centennial Limousine, Inc., fails to make full and timely payment as required in the Stipulation for Settlement of Civil Penalties, those provisions in paragraph 5 of the Stipulation shall take effect.
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 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