

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 08G-230EC

Civil Penalty Assessment Notice No. 87444

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STIPULATION AND SETTLEMENT AGREEMENT

COLORADO PUBLIC UTILITIES COMMISSION,

Complainant,

v.

MARK DURAN, doing business as Elegant Limousine,

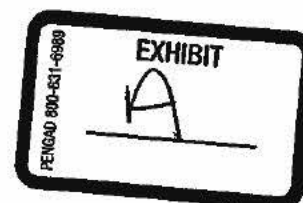
Respondent.



Staff of the Public Utilities Commission (Staff) and Mark Duran, doing business as Elegant Limousine, (Respondent) enter into this Stipulation and Settlement Agreement (Agreement) in the above-referenced docket as a complete and final resolution of all issues. Staff and Respondent shall be collectively referred to as Parties.

Background

1. On June 13, 2008 the Colorado Public Utilities Commission (CPUC or Commission) issued Respondent Civil Penalty Assessment Notice No. 87444 (the CPAN) seeking civil penalties of \$1100.00 (or \$550.00 if paid within 10 days). The alleged violation occurred on April 26, 2008. The CPAN alleged Respondent violated C.R.S. § 40-16-103 and 4 CCR 723-6-6302 [No person shall offer services as an exempt passenger carrier (luxury limousine service without a valid registration issued by the Public Utilities Commission)] as Count 1 of the CPAN, which is incorporated into this Stipulation and Settlement Agreement and referenced as Exhibit 1.



2. On July 22, 2008, the undersigned counsel for Staff entered her appearance on behalf of Staff.

3. The Commission set a hearing in this matter on September 4, 2008 at 9:00 a.m. The hearing was vacated at the request of the Parties on or about September 3, 2008, because the parties reached settlement in principle as set forth in this Agreement.

4. 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).

5. The Parties submit the public interest is served by assessing Respondent the reduced civil penalty of \$600.00 to be paid within ten (10) days of a final Commission decision accepting the Stipulation and Settlement Agreement. Respondent operates his business as a sole proprietorship at this time, although changes to that status will be made as set forth below, and cannot afford the full assessment of the civil penalty without undue financial hardship.

6. Staff is satisfied that these facts and the terms set forth below are sufficient to motivate Respondent to comply with the Colorado Public Utilities law relating to transportation by motor vehicle and the Commission's Rules in the future.

Stipulation and Settlement Agreement

7. This Stipulation and Settlement Agreement is entered into by and between Trial Staff of the Commission ("Staff") and Mark Duran, doing business as Elegant Limousine ("Respondent") as a result of Docket No 08G-08G-230EC in which the Respondent was cited in a civil penalty notice assessment ("CPAN") for a violation of the Colorado Revised Statutes, or in the alternative, a violation of the Transportation Rules of the Colorado Public Utilities Commission.

8. The Respondent admits liability to the violation in CPAN No. 87444—that is, Violation No. 1 which is attached as Exhibit A.

9. This Agreement has been reached in consideration of Respondent's admission of liability in Paragraph 8, above, and in the spirit of compromise and in light of the uncertainties of trial, and to avoid the costly expense of litigation. The Parties also agree that this Agreement promotes administrative efficiency by avoiding the time and expense that would be necessarily devoted to a full hearing on this matter, as well as in consideration of the amount of monies that would have been spent by either party on attorney's fees and costs. For these reasons and the reasons set out in Paragraph 14 below, The Parties have agreed to a reduction in the amount of the civil penalty from \$1100.00 to \$600.00.

10. The Respondent has agreed to make one full payment of negotiated settlement amount of \$600.00 by certified funds in person no later than ten (10) days after the Commission final order and to complete all other requirements of the Respondent set forth in this stipulation and settlement agreement.

11. The Respondent has recognized and agreed that failure to either make the one full payment or to make the payment in certified funds or to complete all of his obligations as set forth in this stipulation and settlement agreement will result in the Respondent being liable for

the full penalty amount of \$1100.00 without any further hearing or administrative or adjudicatory process.

12. Respondent agrees and stipulates that failure complete his obligations as set forth in this stipulation and settlement agreement and/or to pay the settlement amount within ten (10) days of the Commission final order shall also be deemed as a waiver by Respondent of any and all rights to file exceptions and/or to all rights to file a request for rehearing, reargument and reconsideration or any other form of appeal. This result will mean that no payment plan is needed. Nor will any additional administrative or adjudicatory time and expense be incurred by the Commission, Staff and/or the Respondent.

13. Respondent further agrees that if it should be found in violation within two years of the date of Commission final order in this docket for the Count in which the Respondent has admitted liability, Respondent shall be liable for the full amount pertaining to this docket of \$1100.00, less any payments made in accordance with paragraph 10 above. In the event such occurs, such payment will be due immediately. This liability shall occur whether attributed to Mr. Duran as a sole proprietorship, or as a driver for or owner of any luxury limousine service, including but not limited to Chauffeur de'Elegance, LLC. Respondent and Staff agree that the specific intent of paragraph 13 is to prevent further violations of Commission rules.

14. In addition to the reasons expressed in paragraphs 4, 5, and 6 above, Staff and Respondent have agreed to the following stipulation of facts and obligations to be considered by the ALJ for consideration of approval of this agreement pursuant to Commission Rule 1302 (b):

a. Respondent has made a full refund of the funds requested by an individual who made a complaint to the Commission concerning services provided by the Respondent. This CPUC complaint is the underlying event which led to an investigation by the Commission Staff and the ensuing CPAN. The Respondent has admitted to the maximum level of culpability for all violations.

b. The Respondent has no record of prior CPANs resulting from the Safety and Compliance audit procedure, although previous Safety and Compliance Audits have resulted in notice of various Commission Rule violations.

c. Both Parties stipulate that the Respondent, upon receipt of the CPAN, immediately began corrective actions by filing an application to properly register with the Commission as a regulated luxury limousine carrier and is in the process of obtaining the necessary documents and proof of insurance certificates needed for approval of his application.

d. Mr. Duran initiated contact with Staff of the Commission prior to the hearing date to begin discussions on settlement and corrective actions that he needed to take to be in compliance with Colorado Statutes and Commission Rules. Both Staff and Respondent consider this communication and discussions to be a good faith showing of an attempt to be in compliance with Commission Rules as well as a fact indicating the Respondent's intent to admit his liability and to correct the identified alleged violations listed in the CPAN. .

e. The Parties also stipulate to the fact that the Respondent, Mark Duran, is an officer, owner and a driver for Chauffeur de'Elegance LLC, a Colorado corporation, with a Colorado registered trade name of An Elegant Limousine. Both parties also stipulate that Chauffeur de'Elegance is a very small business. Both Parties stipulate that the settlement amount of penalty will cause a loss of the revenues equal to at least one limousine trip. Both Parties stipulate that the imposition of the full penalty amount for the violations incurred by An Elegant Limousine would result a significant loss of net income to Mr. Duran. It is the position of both parties that such a loss could impact the Company's ability to remain in business.

15. The Parties agree that all matters that were raised or could have been raised in this docket relating to the issues specifically identified and addressed herein have been resolved by the Stipulation and Agreement. This Stipulation and Agreement shall not be construed against any Party and shall be construed as written by both Parties. This Stipulation and Agreement may be executed in counterparts, each of which when taken together shall constitute the entire Agreement of the Parties, and no further modification of this Agreement is allowed, except in writing by the parties, and as provided in an further order issued by the Public Utilities Commission.

16. 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 docket shall be set for hearing.

EXECUTED this 12 th day of Sept 2008.

STAFF OF THE COLORADO
PUBLIC UTILITIES COMMISSION

Approved as to form:

JOHN W. SUTHERS, ATTORNEY GENERAL

By:

Robert Laws
Robert Laws

1560 Broadway Suite 250
Denver, Colorado 80202

Senior Criminal Investigator
Colorado Public Utilities Commission

By:

Jean S. Watson-Weidner
Jean S. Watson-Weidner, #21036*

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

**COUNSEL FOR STAFF OF THE
PUBLIC UTILITIES COMMISSION**

*Counsel of Record

MARK DURAN, DOING BUSINESS AS AN ELEGANT LIMOUSINE

By:

Mark Duran
Mark Duran, Individually and as Owner and Officer of
Chauffeur de'Elegance LLC.
467 Denver Avenue, Loveland, CO 80539
P.O. Box 3105 Loveland, CO 80539

CIVIL PENALTY ASSESSMENT NOTICE OR NOTICE OF COMPLAINT TO APPEAR

No 8744-CPAN

Public Utilities Commission of the State of Colorado

(Complainant)

Mark Duran, DBA ^{V.A.} Elegant Limousine

(Respondent)

PUC Authority Number(s): LL-01383 REVOKED as Chauffeur de'Elegance LLC

Physical Address: 467 Denver Avenue, Loveland, CO

Mailing Address: P.O. Box 3105, Loveland, CO 80539

| No. | Date of Violation | Violation Cite | Nature of Violation | Place of Violation | Penalty | Penalty If Paid Within 10 Days |
|-----|-------------------|------------------------------------|--|--------------------|-----------|--------------------------------|
| 1 | 04/26/2008 | C.R.S. 40-18-103 4 CCR 723-6302 | No person shall offer services as an exempt passenger carrier (luxury limousine service) without a valid registration issued by the Public Utilities Commission. | Loveland, CO | \$1100.00 | \$550.00 |

COMMENTS: See CCTS Complaint 87444 for complete details. Duran offered/is offering and is conducting business as a luxury limousine service, to wit, "Elegant Limousine" after his registration was revoked by the Commission.

Total Penalty: \$ 1100.00

Total Penalty If Paid Within 10 Calendar Days: \$550.00

I HEREBY ACKNOWLEDGE RECEIPT OF THIS NOTICE.

[Signature]
Respondent's Signature

06/30/08
Date

The undersigned has probable cause to believe that the Respondent committed the violation(s) cited.

Crim. Inv. M.C. Williams, #5019
Print name

[Signature]
Signature

6/2/08
Date

Service

(For Commission use only - completed upon affecting service). The undersigned affirms that a copy of this Civil Penalty Assessment Notice or Notice of Complaint to Appear was duly served upon the respondent by:

☒ personal service; or

☐ Certified mail, return receipt requested.

Crim. Inv. M.C. Williams, #5019
Print name

[Signature]
Signature

06/30/08
Date

PERIOD 800-431-6988

EXHIBIT

B

THIS IS A LEGAL DOCUMENT -- PLEASE READ ALL ENCLOSED INFORMATION

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within MOTION FOR APPROVAL OF
STIPULATION AND SETTLEMENT AGREEMENT AND WAIVER OF RESPONSE
TIME upon all parties herein by depositing copies of same in the United States mail, first
class postage prepaid, or as otherwise indicated, at Denver, Colorado, this 10th day of
September, 2008, addressed as follows:

Mark Duran
An Elegant Limousine
467 Denver Avenue
Loveland, CO 80539

Mark Duran
An Elegant Limousine
P.O. Box 3105
Loveland, CO 80539

Bob Laws
Public Utilities Commission
1560 Broadway Suite 250
Denver, CO 80202
BY INTERDEPARTMENTAL MAIL

M.C. Williams
Public Utilities Commission
1560 Broadway Suite 250
Denver, CO 80202
BY INTERDEPARTMENTAL MAIL

Dino Ioannides
Advisory Staff
Public Utilities Commission
1560 Broadway Suite 250
Denver, CO 80202
BY INTERDEPARTMENTAL MAIL


Melissa Lamb